DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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

Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

ATTORNEY'S FEES FINAL ORDER INDEX

VOLUME ONE

DECEMBER 2002

Note: This index contains summaries of final orders on attorney's fees entered by Division arbitrators in the arbitration program described by Section 718.1255, Florida Statutes, during the period July 1992 through December 31, 2002. Final orders entered after December 31, 2002 will be reported in a subsequent publication.

ATTORNEY'S FEES FINAL ORDER INDEX
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Costs

The Alexander Condo. Assn., Inc. v. Caniggia,
Case No. 99-1315 (Pine / Final Order on Attorney's Fees / August 12, 1999)

- Cost of postage, long distance service, fax service, and photocopies are routine office expenses and are not to be taxed as costs unless specifically required by arbitrator; rather, such expenses should be factored into the attorney's hourly rate.

Barrera, individually and Bleau Fontaine Condo. Number Two, Inc. v. Bleau Fontaine Community Assoc., Inc.,
Case No. 01-2223 (Draper / Final Order on Attorney's Fees / January 26, 2001)

- Amount incurred for westlaw for routine legal research cannot be awarded as cost, as it is a routine, non-compensable expense.

The Barton Apartments, Inc. v. Worcester,
Case No. 01-2226 (Powell / Amended Final Order on Motion for Costs and Attorney's Fees / March 29, 2001)

- Association's cost of personally serving unit owner with a copy of the petition at the time the petition was filed with the Division was not a recoverable cost because it did not constitute service of process and was not otherwise an appropriate and relevant cost. The arbitrator noted that, an instance might occur where the return of service would be relevant in determining the prevailing party, since it would reflect when the respondent was notified that a petition was being filed in relation to when the relief sought was provided by the respondent. In such an instance, it could be argued that the service was a necessary and recoverable cost, but that circumstance did not exist in the present case.

Big Pass Assn., Inc. v. Aaron,
Case No. 95-0305F (Price / Final Order on Petition for Attorney's Fees and Costs / October 31, 1995)

- Costs for court reporter's attendance at deposition not allowed where no part of deposition was read or used for impeachment at the arbitration hearing.

Chateau Chaumont of Ibis Isle Assn., Inc. v. Williams, et al.,
Case No. 95-0260F (Draper / Final Order on Petition for Award of Costs and Attorney's Fees / September 21, 1995)

- Attorney's fees portion of subcontracted legal research, billed at $190.00 per hour, may not be compensated as "cost"; as attorney's fee request, it lacked attorney's affidavit of experience/detail of services rendered; therefore, minimum hourly rate of $100 allowed for the 5.6 hours claimed.

- Costs of certified copies of court records admitted into evidence recoverable.

- Costs of court reporter's attendance fee for final hearing allowed.

Costs (continued)

Circle Woods Owners Assoc. Inc. Of Venice v. Balazas, et al.,
Case No. 02-4841 (Gioia / Final Order Awarding Attorney's Fees and Costs / June 4, 2002)

- The Petitioner seeks to recover $556. 50 for "work in progress fees." This is insufficiently documented to be awarded and would appear to be a post arbitration expense DENIED.

Coren v. Summit Towers Condo. Assn., Inc.,
Case No. 96-0283F (Draper / Final Order on Attorney's Fees / November 1, 1996)

- Cost of transcript of hearing not awarded. Statewide Uniform Guidelines for Taxation of costs in civil actions do not support award; petitioner was not required to file transcript but unilaterally decided to do so.

Eagle's Nest Condo. Assn., Inc. v. Small, et al.,
Case No. 98-3732 (Cowal / Final Order on Attorney's Fees / March 29, 1999)

- "Witness expense" would not be awarded as cost when no hearing was scheduled or held.

- Title search cost would not be awarded to association since association could ascertain ownership from association's roster kept pursuant to s. 718.111(12)(a)7., F.S.

- Association's cost of personally serving multiple respondents was allowed, as arbitrator ordered service.

Egret's Walk III Condo. Assn., Inc. v. Athans,
Case No. 97-0254F (Draper / Final Order on Attorney's Fees / July 22, 1997)

- Cost of deposition of expert admitted into evidence at final hearing allowed.

Ensenada Condo. Assn., Inc. v. Chavez,
Case No. 98-3932 (La Plante / Final Order on Attorney's Fees / May 26, 1998)

- Postage and photocopy expenses are office expenses and may not be awarded as costs.

Estes, et al. v. Lido of Pinellas Condo. Assn., Inc.,
Case No. 95-0421F (Draper / Final Order on Attorney's Fees / May 31, 1995)

- Paralegal services are compensable where services are provided under the supervision of a licensed attorney and are non-clerical, meaningful legal work such as conferences with clients to prepare prehearing stipulation, drafting stipulation, meeting with witnesses in preparation for hearing.

- Work performed, rather than paralegal's qualifications, is focus of inquiry.

- Duplication of services by attorney and paralegal will not be compensated.

- $35/hour for paralegal services deemed reasonable.

Costs (continued)

Estes, et al. v. Lido of Pinellas Condo. Assn., Inc., (continued)
Case No. 95-0421F (Draper / Final Order on Attorney's Fees / May 31, 1995)

- Qualified representative's services, described as consultant services, not compensable.

Galleon Condo. Apts., Inc. v. Rappaport,
Case No. 93-0143F (Player / Final Order on Attorney's Fees / July 30, 1993)

- Costs of $510 attributable to a long distance telephone conference for the final hearing were recoverable; costs for messenger service, express mail, photo copying, fax transmission, and other long distance telephone calls are non-recoverable office expenses.

- Expert witness costs awarded consistent with the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. The photographs, report, and testimony of the expert witness regarding the issue of the reasonableness of the board rule prohibiting the replacement of carpeting on exterior balconies was of great assistance to the arbitrator. Travel time of expert witness not recoverable. Hourly rate of $120 per hour, and $240 per hour for hearing testimony, was reasonable for the board certified forensic engineer.

The Gardens at Pembroke Lakes Condo. Assoc., Inc. v. Clementi,
Case No. 01-2368 (Pine / Final Order on Motion for Attorney's Fees / March 21, 2001)

- Where the file contains a photocopy of the petitioner's check for the $50 filing fee, petitioner's failure to include a receipt for this cost of arbitration does not preclude an award for the cost of the filing fee.

Gulfside Condo. Assn., Inc. v. Kim,
Case No. 93-0164F (Player / Final Order on Petitioner's Motion for Award of Attorney's Fees and Costs / August 26, 1993)

- Costs awarded for two telephone conference calls between the parties and the arbitrator. Costs denied for copying and postage expenses which are ordinary office expenses and not recoverable.

Halifax Shores Homeowners Assoc., Inc. v. Varano,
Case No. 01-2346 (Scheuerman / Final Order on Motion for Attorney's Fees / March 12, 2001)

- The association was awarded attorney's fees for drafting the pre-arbitration notice letter required by s.718.1255,FS. Although activity occurred prior to the drafting and filing of the petition, the letter is made a pre-condition to filing for arbitration and is therefore a proper subject of recovery.

The Highlands at Kendale Lakes Condo. Assoc., Inc. v. Prim,
Case No. 00-1066 (Powell / Final Order on Motion for Fees and Cost / July 28, 2000)

- A charge of $25 for abstracting costs was disallowed where there was no showing that this expense was necessary for the prosecution of the action.

Costs (continued)

Ironwood First Condo. Assn., Inc. v. Sorvick,
Case No. 99-1186 (Anderson-Adams / Final Order on Attorney's Fees / July 8, 1999)

- No award of costs would be made for photocopying condominium documents where no receipt for photocopying was submitted.

Island Sun Condo. Assoc., Inc. v. Olsen, et al.,
Case No. 00-0876 (Scheuerman / Final Order on Motion for Attorney's Fees / August 28, 2000)

- Costs of preparing for mediation and attending mediation session are recoverable costs where arbitrator ordered parties to attend mediation.

Katchen v. Braemer Isle Condo. Assn., Inc.,
Case No. 99-1677 (Scheuerman / Final Order on Request for Attorney's Fees / November 24, 1999)

- Costs of expert horticulturist witnesses awarded including amounts charged for site inspection, report, and testimony at trial. Costs of preparing color photocopies of photographs submitted at trial also allowed. Amount billed for preparing landscaping plans disallowed where plans were not prepared in conjunction with trial, but were prepared as part of the association's landscaping maintenance plans.

Kemp, et al. v. Island Village Condo. of Holmes Beach, Inc.,
Case No. 98-4488 (Scheuerman / Final Order on Motion for Costs and Attorney's Fees / September 18, 1998)

- The sum of $80.00 per hour for a paralegal for the tasks performed found to be excessive; hourly rate reduced to $60.00 per hour.

- The sum of $250.00 representing time spent by the expert witness in consulting with the association attorney is not a recoverable cost.

- Although as a general matter travel costs of an expert witness to the site of the trial are not recoverable, under the uniform guidelines the arbitrator has the discretion to award travel costs where, as here, expert's attendance at the final hearing was necessary and helpful in permitting the illumination of certain key issues.

- Costs of expert witness, who had previously conducted pre-turnover inspection for the association but who was retained by the owner for use in arbitration proceeding, in inspecting building site may be awarded even though the arbitrator rejected one major contention of the witness, where the presence, participation and testimony of the expert was helpful in explaining the earlier encountered problems and why the association had taken no remedial action.

Kittel-Glass v. Oceans Four Condo. Assn., Inc.,
Case No. 95-0039F (Richardson / Final Order on Attorney's Fees and Costs / March 14, 1995)

- Association not awarded fees for legal assistant's time because it involved routine clerical tasks.

Costs (continued)

Kittel-Glass v. Oceans Four Condo. Assn., Inc., (continued)
Case No. 95-0039F (Richardson / Final Order on Attorney's Fees and Costs / March 14, 1995)

- Expense of legal research was allowed where copies of recently issued opinion were submitted at the hearing. Cost of photocopies of documents submitted during arbitration allowed.

Lake Lawn Condo. Assn., Inc. v. Walls,
Case No. 00-0161 (Powell / Final Order on Motion for Costs and Attorney's Fees / April 28, 2000)

- Under Statewide Guidelines for Taxation of Costs in Civil Actions, cost for testimony of expert was limited to expert's actual time testifying, billed at $125 per hour.

Lamar v. La Arboleda Condo. Assn., Inc.,
Case No. 93-0354F (Goin / Final Order / April 15, 1994)

- Consistent with statewide uniform guidelines for taxation of costs in civil actions, cost of report of air conditioning expert would not be awarded. Report was submitted after time expired for filing affidavits and legal arguments, and detailed the method of inspection to be undertaken by the arbitrator in viewing the air conditioning system. Report was not necessary, as the procedure for inspection had already been specified. Costs of $45.00 for affidavit and research stating technician's expert opinion would be taxed.

- Inspection fee of $250.00, which inspection occurred prior to the filing of arbitration, and was not undertaken for the purpose of permitting an expert to testify, but only to determine whether there was a problem, and the cause of the noise problem, was not a taxable cost.

Leisure Living Estates Condo. Assn., Inc. v. Sippell,
Case No. 93-0355F (Player / Final Order on Attorney's Fees / January 26, 1994)

- Cost of attendance of court reporter at final hearing was proper.

Malone v. Pebble Springs Condo. Assoc., Inc.,
Case No. 00-1934 (Pine / Final Order on Motion for Costs / March 13, 2001)

- Services performed by a non-attorney consultant who files documents on a party's behalf are not compensable.

- Paralegal services may be compensable where the services sought to be compensated are non-clerical, meaningful legal services, but party seeking compensation must describe actual actions taken that a clerical function from work requiring the expertise of a paralegal.

- Party who successfully prosecutes a case without benefit of legal counsel is entitled to direct reimbursement of costs that would not have been awarded a party who is represented by counsel. Routine overhead expenses are to be subsumed under the hourly rate of an attorney may be awarded to party who has no legal practice and therefore no routine overhead expenses.

Costs (continued)

Manor Grove Village III Condo. Assn., Inc. v. Thyfault,
Case No. 94-0188 (Richardson / Final Order / June 15, 1994)

- Defaulting unit owner held liable for association's attorney's fees of $550.00 ($737.00 requested), and cost of personal service where unit owner refused to claim certified mail.

Ocean Club Townhomes at Juniper Condo. Assoc., Inc. v. Speigel,
Case No. 02-4302 (Scheuerman / Final Order on Motions for Attorney's Fees / March 14, 2002)

- Where each side prevailed on 1 major issue each and 2 minor issues, each side would bear its own fees where the arbitrator adopted as a reasonable fee the lower amount of the fees changed by one party.

Omni Bay House Condo. Assoc., Inc. v. Aldanas,
Case No. 01-3252 (Pine / Final Order Awarding Costs in Part / August 27, 2001)

- Unrepresented unit owner is entitled to award of costs including cost of office supplies that would have been considered office overhead, not subject to award, if prevailing unit owner been represented by an attorney. Where minority of photographs submitted appear to be in any way relevant to case, partial cost of obtaining and developing film awarded. Where use of fax machine was not established to be reasonably necessary for respondent's defense, cost of repairing or maintaining fax and obtaining supplies for it not awarded. Where neither certified mail nor express mail established to be reasonably necessary for respondent's defense, cost of same not awarded. Consultant/translator's fees not awardable cost when duties involved guiding respondent through arbitration process and breaking down words (in effect, translating English to English.)

Paradise lakes RV Park Condo. Assoc. Inc. v. Qualls,
Case No. 02-5571 (Coln / Final Order Awarding Costs / November 4, 2002)

- Where association was not represented by counsel, association entitled to an award of costs including costs for copies and postage. While the guidelines normally do not permit an award of these costs, this is based upon these costs are ordinarry office expenses that are normally covered by an attorney's hourly rate. Since the association was not represented by an attorney, this rational does not apply and the association should be awarded these costs.

Park East Home Owners Assn., Inc. v. Neu,
Case No. 94-0400F (Goin / Final Order on Petitioner's Motion for Attorney's Fees and Costs / November 29, 1994)

- Paralegal and law clerk time may be included as items of cost; however, 4.0 hours that paralegal spent drafting routine petition was excessive. Long distance telephone charges are considered ordinary office expenses and not recoverable.

The Pinebark Condo. No. 3., Inc. v. Salabarria, et al.,
Case No. 99-2299 (Pasley / Final Order on Attorney's Fees / March 27, 2000)

- Recovery for the services of a translator is permitted where the translator's services were reasonable and necessary.

Costs (continued)

The Pines of Clearwater Condo., Inc. v. Wood,
Case No. 94-0373F (Scheuerman / Final Order / September 28, 1994)

- Where association forced to personally serve unit owner who resisted efforts through certified mail to obtain jurisdiction over her, costs of $12.00 expended in service were recovered.

Prince George Condo. Assn., Inc. v. Soffa,
Case No. 96-0219F (Goin / Final Order on Petition for Prevailing Party Attorney's Fees and Costs / July 8, 1996)

- Where association entered unit during pendency of proceeding and cleaned unit, the cost of cleaning unit was not awarded because it was not an item of damages requested in petition.

River Manor Condo. Assn., Inc. v. Cozza,
Case No. 94-0035F (Richardson / Final Order / January 27, 1994)

- Costs for title search denied because association in official records should have this information.

Rough Creek Condo. Assn., Inc. v. Pope,
Case No. 99-1738 (Draper / Final Order on Attorney's Fees / January 24, 2000)

- Cost of copying videotape would be reimbursed where final hearing was held by telephone, and videotape assisted the arbitrator in understanding the dispute.

South Gate Village Green Condo. Section One Assn., Inc. v. Marquis,
Case No. 94-0276F (Goin / Final Order on Respondents' Motion for Costs / November 22, 1994)

- Pro se unit owners awarded costs of copying documents (amendments to Dec. and Deeds) that were actually filed in arbitration file. Costs for supplies (legal pads, envelopes, etc.) and copying pleadings not awarded. Costs regarding photographs introduced into evidence, but on counter-claim, on which unit owners did not prevail, were not awarded.

Tennis Club Davis Condo. Assn., Inc. v. Cedola,
Case No. 98-3067 (Draper / Final Order on Attorney's Fees / May 19, 1998)

- Witness fees and subpoena costs for individuals who testify at a hearing are compensable.

Tivioli Trace Condo. Assn., Inc. v. Ng,
Case No. 96-0317F (Scheuerman / Final Order on Attorney's Fees / September 17,1996)

- Cost of consultation with veterinarian not awarded where it was not shown necessary for the disposition of any issues in the case.

Costs (continued)

Twin Fountains Club Owners Ad-Hoc Committee et al v. Twin Fountains Club,
Case No. 02-4550 (Scheuerman / Final Order on Motion for Attorney's Fees / May 8, 2002)

- Prevailing owners not awarded time spent to counsel traveling to site of the final hearing where owners did not allege or prove that competent counsel was not available at the location of the final hearing.

Warren, et al. v. Springwood Village Condo. Assoc. of Longwood, Inc.,
Case No. 01-3785 (Scheuerman / Final Order on Motion for Attorney's Fees / February 20, 2002)

- Where $1550.00 transcript fee requested as a recoverable expense, transcropt fee not awarded where transcript would not be used by reviewing court and where transcript not filed with arbitrator for use in preparation of the final order.

Defenses

- failure to timely file/request fees -

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,
Case No. 95-0227F (Draper / Order on Respondent's Petition for Attorney's Fees / July 19, 1995)

- Motion for award of fees denied where prior to entry of final order, prevailing party failed to request award of fees; the purpose of the rule's pleading requirement is to place the parties on notice that fees will be sought, recognizing that whether a party's opponent has requested fees may play an important role in the party's decisions affecting the case.

Aldrich v. Tahitian Gardens Condo. Assn., Inc.,
Case No. 97-2197 (Draper / Final Order on Attorney's Fees / December 11, 1997)

- Allegation in association's answer that it had retained an attorney and was obligated to pay a reasonable fee for legal services does not constitute a demand for fees as required by Rule 61B-45.048(1), F.A.C., and *Stockman v. Downs*.

Allaire v. Golden Bay Towers, Inc.,
Case No. 98-4664 (Scheuerman / Final Order on Request for Attorney's Fees / October 21, 1998)

- Motion for Fees denied where association never filed a claim for fees prior to rendition of the final order. Language in Order Requiring Answer reminding parties of mandatory fee award is directed to respondent and did not put petitioner on notice that fees would be sought.

Aspenwood at Grenelefe Condo. Assn., Inc. v. Schifano,
Case No. 95-0119F (Richardson / Final Order on Attorney's Fees / June 18, 1995)

- Where association's request for fees was not made before entry of final order, recovery was precluded.

Defenses (continued)

- failure to timely file/request fees – (continued)

Bawi, et al. v. Inverrary Resort Hotel Condo. Assn., Inc.,
Case No. 98-3363 (Draper / Final Order Dismissing Respondent's Motion for Attorney's Fees / April 30, 1998)

- Respondent would not be awarded its attorney's fees where petition in underlying arbitration was dismissed for lack of jurisdiction and where respondent never requested an award of fees prior to entry of the final order.

Baytree, a Condo., Section 9, Inc. v. Wright,
Case No. 93-0259F (Grubbs / Order of Dismissal and Transfer / September 1, 1993)

- Petition for attorney's fees filed substantially later than the forty-five day period provided by rule should be dismissed.

Bermuda Cays Condo. Assn., Inc. v. Baker,
Case No. 98-4377 (Powell / Final Order on Attorney's Fees / March 12, 1999)

- Unit owners were denied recovery of fees for their own services and recovery of costs because their request/motion for fees and costs was filed more than 45 days after the issuance of the final order in the underlying case.

Boettger et al. v. Ocean Palms Condo. Assn., Inc.,
Case No. 93-0204F (Goin / Order Striking Respondent's Cross Motion for Attorney's Fees and Costs / September 2, 1993)

- Respondent's request for attorney's fees, not filed within 45 days of rendition of the final order in the main arbitration proceeding, was dismissed as untimely.

Bonaventure Community Assn., Inc. v. Alfonso, et al.,
Case no. 98-5388 (Cowal / Final Order on Attorney's Fees / January 27, 1999)

- Even where statute provides for mandatory award of attorney's fees and costs to prevailing party, party's failure to put opposing party on notice that fees will be sought amounts to waiver of claim for fees. Section 718.1255(4)(k), F.S.

Bordeaux Village Condo. Assoc. Inc. v. Tolbert, et al.,
Case No. 02-5104 (Gioia / Final Order Denying Motion to Tax Attorney's Fees / July 17, 2002)

- The above referenced motion for attorney's fees was thus filed with the Department 52 days after the issuance of the final order. The certificate of service suggests that it had been mailed on the 44th day after the issuance of the final order, and a dated postmark is absent from the envelope containing the motion. Pursuant to rule 61B-45.048, F.A.C., a motion for costs and fees must be filed within 45 days of the date of the entry of the final order.

Defenses (continued)

- failure to timely file/request fees – (continued)

Cail v. Sebastian Harbour Villas Condo. Assn., Inc, et al.,
Case No. 96-0365F (Scheuerman / Final Order On Request For Attorney's Fees / November 1, 1996)

- Petition for fees dismissed where owner failed to request fees prior to entry of final order. Order of the arbitrator alluding to possible future award of fees different from request for award from a party which is a formal demand for fees.

Casa Del Sol Madrid Assn., Inc. v. Bussow,
Case No. 96-0284F (Scheuerman / Final Order On Attorney's Fees / September 3, 1996)

- Fees not awarded to association where motion for fees filed 68 days after rendition of final order and not within 45 days as required by rules.

Cascades of Lauderhill Condo. Assn. v. Feingold,
Case No. 93-0383F (Price / Order on Motion for Attorney's Fees / February 8, 1994)

- Where motion for attorney's fees is filed 69 days after rendition of the final order, motion is untimely and must be denied.

Cummings v. Seagate Towers Condo. Assn., Inc.,
Case No. 95-0125F (Richardson / Final Order on Attorney's Fees / June 14, 1995)

- Association's failure to timely plead for fees precludes an award.

Cypress Chase North Condo. #2 Assoc., Inc. v. Young,
Case No. 00-0788 (Pasley / Order Denying Motion to Set Aside Default and Denying Motion for Rehearing / September 28, 2000)

- Where the respondent admits receiving all of the pleadings and orders when she returned from Spain on March 27, 2000, incidentally the day on which the final order on default was entered in the underlying case, her failure to file any pleading until June 12, shows an absence of reasonable diligence in seeking to vacate the default.

Frasca v. Sabal Palm Condo. of Pine Island Ridge,
Case No. 98-4876 (Powell / Final Order on Attorney's Fees / January 28, 1999)

- Where prevailing unit owner sought fees, association claimed that fees should be set off by fees and costs due to association, because it had prevailed on certain issues. The arbitrator rejected the association's claim for fees because it had not pled for or requested fees at any time during the underlying case, as required by Rule 61B-45.048(1) F.A.C.

Fair Oaks North, Inc. v. Ledo,
Case No. 95-0333F (Scheuerman / Order Dismissing Petition for Fees / September 11, 1995)

- Where motion for award of fees not filed until August 10, and final order entered March 27, and where no argument advanced in support of jurisdiction of arbitrator to entertain motion, request for award of fees denied.

Defenses (continued)

- failure to timely file/request fees – (continued)

Farnham v. Vista Harbor Assn., Inc.,
Case No. 97-2259 / Draper / Final Order on Attorney's Fees / February 17, 1998)

- Association denied fees where request for fees was not made until after final order dismissing case was entered. Unit owner's motion to set aside the dismissal because arbitrator had failed to rule on one of his claims and entry of summary final order would not operate to create another opportunity for association to request attorney's fees prior to entry of final order as case was essentially over when final order on dismissal was entered. Due process requires notice of a claim for attorney's fees. *Stockman v. Downs*; Rule 61B-45.048, F.A.C.

Gavey v. Caxambas Tower Condo. Assn., Inc.,
Case No. 96-0139F (Scheuerman / Final Order / April 5, 1996)

- Fees not awarded to association where no request for fees filed prior to entry of final order.

Glen Cove Apts. Condo. Master Assn., Inc. v. Weit,
Case No. 95-0489F (Scheuerman / Order Dismissing Motion for Attorney's Fees / January 23, 1996)

- Petition dismissed where it was filed in excess of 45 days after final order was issued, even though complaint for trial de novo filed. Appeal did not toll the time for filing motion for attorney's fees.

Gulfside Village Condo. Assoc., Inc. v. Gator,
Case No. 00-1276 (Scheuerman / Final Order Denying Rehearing / August 14, 2000)

- Where motion for fees filed two days after 45-day period for filing of motions for fees provided in rules, request for fees untimely and motion denied. Motion was mailed within 45 days, but due to erroneous zip code, was not filed with arbitrator timely.

Habitat II Condo. Assoc., Inc. v. Smith,
Case No. 00-1604 (Draper / Order on Motion for Reconsideration / January 11, 2001)

- Fees movant held to have adequately plead his request for attorney's fees by requesting, in a prayer for relief in a reply to the association's memorandum of law filed prior to entry of final order, that the arbitrator award his "costs and reasonable attorney's fees pursuant to the declaration." The failure to specifically plead entitlement to fees pursuant to S. 718.1255, F.S., was not fatal to the request. In arbitration proceedings pursuant to s. 718.1255, F.S., the question is not whether the request for fees cites a specific statutory basis; rather it is whether the request was made prior to entry of final order.

Kelly Greens Single Family Condo. Assn., Inc. v. Stillings,
Case No. 95-0172F (Scheuerman / Final Order on Motion for Attorney's Fees / May 18, 1995)

- Petition for fees dismissed where it was filed outside 45-day period required by rules.

Defenses (continued)

- failure to timely file/request fees – (continued)

Juno Ocean Walk Condo. Assn., Inc. v. Rhodes,
Case No. 98-4292 (La Plante / Final Order on Attorney's Fees / June 25, 1998)

- Fees not awarded to association where motion for attorney's fees filed 61 days after rendition of final order, in contravention of Rule 61B-45-048, F.A.C.

Mariners Pass Homeowners' Assn., Inc. v. Marzocca,
Case No. 98-4718 (Cowal / Final Order on Petitioner's Motion for Attorney's Fees / August 21, 1998)

- Where association failed to request attorney's fees prior to entry of the final order, an award of fees is precluded by Rule 61B-45.048, F.A.C.

Najafzadeh v. Rossmoor Bahama Village Assn., Inc.,
Case No. 94-0034F (Player / Final Order on Petitioner's Motion for Award of Costs / March 8, 1994)

- Request of pro se unit owner to be reimbursed for costs incurred denied where unit owner failed to request or otherwise plead for recovery of costs until after final order was entered in the main arbitration proceeding. Under administrative rules, any party seeking an award of costs and attorney's fees must plead or otherwise request the award prior to the rendition of the final order.

Neate v. Cypress Club Condo. Inc.,
Case No. 98-5381 (Powell / Final Order on Motion for Attorney's Fees / January 8, 1999)

- Association's motion for fees rejected where it was filed on July 1, 1997, and the last day a timely motion could have been received was June 30, 1997. Equitable considerations were inapplicable because the arbitrator's jurisdiction to decide a motion for fees is limited to pleadings filed within 45 days of the date the arbitration final order is rendered. Five-day mailing rule did not apply to extend the date for filing, because the 45-day period runs from the date the final order is rendered, under Rule 61B-45.048(2), F.A.C., not from when final order is served.

- Where association sought fees, the arbitrator rejected the association's claim for fees, in part, because it had not requested fees in the underlying case prior to entry of the final order, as required by Rule 61B-45.048(1) F.A.C.

North County Company, Inc. v. Yogi by the Sea Condo. Assn., Inc.,
Case No. 93-0119 (Player / Final Order / March 15, 1994)

- Where prevailing petitioners failed to file a plea for attorney's fees prior to rendition of the final order, but merely indicated in a memorandum that the costs of the arbitration should be borne by the association, no attorney's fees awarded.

Defenses (continued)

- failure to timely file/request fees – (continued)

North Oaks Condo. Assn., Inc. v. Grant, et al.,
Case No. 00-0012 (Pine / Partial Final Order / January 31, 2000)

- The fact that the respondent did not realize that the petitioner would file a motion for fees until the petitioner's 11th -hour motion had actually been filed did not act to exempt respondent, in filing his own motion for fees, from time limits set out in Rule 61B-45.048(2), F.A.C.

North Oaks Condo. Assn., Inc. v. Grant, et al.,
Case No. 00-0012 (Pine / Final Order on Motions for Attorney's Fees / March 20, 2000)

- Neither a partial final order on a fees motion nor a reference to one party by another party subsequent to the issuance of the final order on the underlying case will toll the 45-day time limit for filing a motion for prevailing party attorney fees. Rule 61B-45.048(3), F.A.C.

Oceanside Terrace Condo. Assoc., Inc. v. Greenlee,
Case No. 00-0596 (Scheuerman / Summary Final Order / October 4, 2000)

- Unit owner's argument that inquiry letter sent to association pursuant to s. 718.112(2)(a), F.S., after the main arbitration case had ended but before the fees case had commenced, rejected. In order to be excused from the payment of costs and fees, inquiry pursuant to the statute must be sent before commencement of the main proceeding.

Park Place Condo. Assn., Inc. v. Hakki, et al.,
Case No. 95-0334F (Draper / Final Order on Attorney's Fees / March 13, 1996)

- Required notice of an intention to seek attorney's fees not provided where attorney whose services unit owners sought reimbursement of filed no appearance and signed no pleadings. Under the specific facts of this case, arbitrator held notice was not sufficient.

Pathways Condo. Assn., Inc. v. Medina, et al.,
Case No. 98-3701 (Draper / Final Order on Attorney's Fees / June 16, 1998)

- Prevailing association would not be awarded its fees where it failed to serve a copy of its request for fees on respondent unit owners, or their attorney, prior to entry of the final order. Fact that arbitrator indicated in order to show cause that the issue of fees was separate from the substantive issue in the case, did not constitute a request or plea for attorney's fees as required by Rule 61B-45-048(3), F.A.C., and *Stockman v. Downs*, 573 So 2d 835.

Pine Island Ridge Condo. "G" Assn., Inc. v. Rodriguez, et al.,
Case No. 98-2781 (Cowal / Final Order on Petitioner's Motion for Attorney's Fees / April 2, 1998)

- No attorney's fees awarded to association where fees not requested prior to final order as required by Rule 61B-45.048(1) and (3), F.A.C. Mere mention in notice of compliance filed by association that case was "moot except for attorney's fees" does not constitute motion or request for fees.

Defenses (continued)

- failure to timely file/request fees – (continued)

Poinciana Gardens Condo. Assn., Inc. v. Hamad, et al.,
Case No. 95-0263F (Grubbs / Order Denying Motion for Attorney's Fees / December 18, 1995)

- Where attorney did not appear in main case on behalf of respondent; where only papers filed by attorney were after entry of final order; where no request for attorney's fees had been made prior to entry of final order as required by Rule 61B-45.048(1); F.A.C., and where motion for fees did not even allege that respondent was the prevailing party, the motion for attorney's fees would be denied.

Promenade at Kendale Lakes Condo. Assn., Inc. v. Avila,
Case No. 99-2292 (Pasley / Final Order Denying Motion for Attorney's Fees / February 3, 2000)

- Although the unit owner filed the required notice of intent to request attorney's fees, her failure to timely file a motion for attorney's fees in compliance with Rule 61B-45.048(2), F.A.C., requires denial of her motion for attorney's fees.

Rivoli v. Fairways of Tamarac Condo. II Assn., Inc.,
Case No. 95-0401F (Price / Order on Motion to Strike / January 25, 1996)

- 45-day time limit for filing motion for fees is not extended by 5-day "mailing rule" because Rule 61B-45.048, F.A.C., requires motion for fees to be filed within 45 days of rendition of arbitration final order, not 45 days of service of such order.

Ross, et al. v. Cloister Beach Towers Assn., Inc.,
Case No. 99-1085 (Draper / Final Order on Attorney's Fees / July 7, 1999)

- No attorney's fees would be awarded where motion was filed 62 days after rendition of the final order.

Sabal Chase Condo. Assn., Inc. v. Summers,
Case No. 98-4784 (Scheuerman / Final Order Dismissing Motion for Attorney's Fees / October 26, 1998)

- Where motion for recovery of attorney's fees filed 60 days after issuance of the final order in the underlying case, motion was untimely filed and was therefore denied.

Shields v. Versailles Gardens I Condo. Assn., Inc.,
Case No. 98-4609 (Draper / Final Order on Attorney's Fees / September 24, 1998)

- Request for attorney's fees in petition was sufficient under Stockman v. Downs despite failure to specifically cite s. 718.1255(4)(k), F.S. as the basis of the claim. In an arbitration pursuant to s. 718.1255 there can be little doubt that a party's plea for attorney's fees refers to fees contemplated by s. 718.1255(4)(k), F.S.

Defenses (continued)

- failure to timely file/request fees – (continued)

Sunrise Landing Condo. Assn. of Brevard County, Inc. v. Pelosi,
Case No. 99-1894 (Powell / Final Order Dismissing Motion for Attorney's Fees / October 29, 1999)

- Motion for fees dismissed where it was filed on September 14, 1999, and the last day a timely motion could have been received was September 13, 1999. Equitable considerations were inapplicable because the arbitrator's jurisdiction to decide a fees motion was limited to those filed within the 45-day limit imposed by Rule 61B-45.048(2), F.A.C. The five-day mailing rule was inapplicable.

Village Oaks Condo. Assn., Inc. v. Smith,
Case No. 98-3393 (Cowal / Final Order on Petitioner's Motion for Attorney's Fees and Costs / March 31, 1998)

- Where party seeking fees failed to plead or make request for fees prior to entry of final order, party is precluded from award of fees. Rule 61B-45.048(1) and (3), F.A.C.

Vista Del Mar Assn., Inc. v. Lloyd, et al.,
Case No. 98-4379 (La Plante / Final Order on Motion for Attorney's Fees and Costs / July 17, 1998)

- Where association's request for fees was not made before entry of final order, recovery was precluded.

Windrush Bay Condo. Assoc. Inc. v. Lucas,
Case No. 02-5105 (Gioia / Final Order Denying Motion to Tax Attorney's Fees / July 9, 2002)

- Motion for fees dismissed where it was filed outside the 45-day period required by Rule 61B-45.048, F.A.C.

- general defenses -

The Barton Apartments, Inc. v. Worcester,
Case No. 01-2226 (Powell / Amended Final Order on Motion for Costs and Attorney's Fees / March 29, 2001)

- Unit owner's defense, that fees should be reduced due to association's failure to settle the dispute early in the arbitration process, rejected because under the current statute, award of reasonable prevailing party's fees is mandatory.

Bielefeld v. Seaplace at Atlantic Beach Condo. Assn., Inc.,
Case No. 99-1565 (Powell / Final Order on Motion for Fees / April 28, 2000)

- Unit owner's defense that, where the underlying dispute was dismissed when the unit was sold and therefore the arbitrator lacked jurisdiction over the ensuing fees motion, was rejected. For purposes of determining jurisdiction over the fees motion, the status of the parties at the point when the dispute arose determines the applicability of the statute awarding fees.

Defenses (continued)

- general defenses – (continued)

Brown v. Wellington L Condo. Assn., Inc.,
Case No. 95-0106F (Scheuerman / Final Order on Motion for Attorney's Fees / May 17, 1995)

- Fees awarded reduced by one-fifth where prevailing association failed to satisfactorily respond to written inquiry sent to the association by certified mail pursuant to s. 718.112(2)(a), F.S., which places the obligation on the association to give a substantive response to inquiries from the unit owners, failing which the board shall be precluded from recovering costs and attorney's fees in any subsequent arbitration. One of the five questions raised by the unit owner was not directly responded to by the association.

Calusa Club Village Condo. Building Assn., Inc. v. Rodriguez, et al.,
Case No. 96-0610 (Powell / Final Order on Motion for Attorney's Fees / December 31, 1998)

- Where prevailing unit owner sought fees, association claimed that fees should be reduced or denied because fees were awarded to unit owner in circuit court following trial de novo, and much of the work in the arbitration case was duplicated in the circuit court action. The arbitrator did not reduce or deny fees claimed in the arbitration because the invoices in the two actions did not reflect that there was overlap in charges for specific items or for research.

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Herer,
Case No. 00-0477 (Pine / Final Order on Motion for Attorney's Fees and Costs / April 14, 2000)

- Assertion of selective enforcement, going to the merits of the underlying action, is not a defense to a fees motion and is stricken.

Continental Towers, Inc. v. Nassif,
Case No. 99-2414 (Draper / Amended Final Order on Attorney's Fees / February 15, 2000)

- Fees motion arose out of an underlying case in which the arbitrator held that unit owners, and not the association, were responsible for the cost of removing and replacing tile on unit balconies needing repair. Although the association prevailed in the underlying action, its motion for fees was barred under s. 718.112(2)(a)2., F.S., because the association failed to respond to the unit owners' inquiry, out of which the dispute arose.

Cypress Chase North Condo. #2 Assn., Inc. v. Urbano,
Case No. 00-0325 (Pine / Final Order on Motion for Attorney's Fees / March 14, 2000)

- Where complained-of dog is removed before respondent becomes a party to the arbitration proceeding, before respondent comes under the jurisdiction of this tribunal, the relief asked by the petitioner is not obtained during the pendency of the arbitration case; consequently, the petitioner is not entitled to prevailing party attorney's fees.

Defenses (continued)

- general defenses – (continued)

The Diplomat Apartments Assn., Inc. v. Lunn,
Case No. 98-5269 (Powell / Final Order on Attorney's Fees / March 19, 1999)

- Unit owners' defense, that arbitrator had no jurisdiction over dispute in underlying case because it involved the federal Fair Housing Act, was rejected by the arbitrator and fees were awarded to the association.

- Charges for the demand letter and other services incurred well before the filing of the petition for arbitration were disallowed as not incurred in the arbitration proceeding.

East Lake Woodlands Condo. Assn., Inc. v. Moran, et al.,
Case No. 99-1331 (Scheuerman / Final Order on Motion for Attorney's Fees / December 1, 1999)

- Fortunately, or unfortunately, tenants and owners alike are charged with notice of the restrictions of record, including parking restrictions. The fact that they move in without specific notice that certain vehicles or pets are disallowed presents no cognizable legal defense to a later enforcement action, and likewise, presents no defense in the law to a fees petition.

Egret Pointe Condo. Assn., Inc. v. Luciano,
Case No. 99-1891 (Scheuerman / Final Order on Motion for Attorney's Fees / October 20, 1999)

- Arguments from unit owner that association, which prevailed, did not need to hire an attorney, that the unit owners litigated without benefit of counsel, that they already paid a pro-rata portion of the association's attorneys' fees, and that they did not hire the attorney and should not be required to pay for one, were all legally insufficient defenses and were rejected. Statute provides for mandatory award of fees, and arbitrator lacked discretion to withhold award of fees.

Farnham v. Vista Harbor Assn., Inc.,
Case No. 98-3366 (Draper / Final Order on Attorney's Fees and Costs / May 11, 1998)

- Prevailing association would not be awarded its attorney's fees and costs where unit owner sent written complaint concerning dispute to association and association failed to respond within 30 days as required by s. 718.112(2)(a)2., F.S.

Half Moon Bay Condo. Assn., Inc. v. Kanerva,
Case No. 99-2306 (Powell / Final Order on Motion for Fees and Costs / March 6, 2000)

- Under applicable, current version of s. 718.1255, F.S., effective October 1, 1997, and Rule 61B-45.048, F.A.C., the arbitrator, in awarding fees and costs, no longer had leave to consider whether frivolous defenses were raised.

Defenses (continued)

- general defenses – (continued)

Hidden Lake Village of Sarasota, Inc. v. Butler, et al.,
Case No. 94-0183F (Goin / Final Order on Petitioner's Motion for Attorney's Fees / March 2, 1995)

- Owners' defense, that they should not have to pay because association attorney's fees are part of their monthly assessment, rejected.

Island Dunes Oceanside II Condo. Assn., Inc. v. Drexler,
Case No. 98-4068 (Scheuerman / Final Order on Attorney's Fees / July 23, 1998)

- Where in underlying case, owner upon service of the petition removed offending shutters, rendering case moot, it was appropriate to examine in the subsequent fee proceeding whether the association gave, and the owners received, advance written notice of the nature of the dispute and a demand for relief. If association failed to give advance written notice of the dispute as required by statute, fee proceeding following underlying arbitration would be dismissed.

- While statute does not require that a respondent be given actual notice of the nature of the violation and an opportunity to cure violation prior to the commencement of enforcement proceedings, statute does require that petition recite, and have attached to it, proof that the petitioner gave the respondents advance written notice of the dispute and a demand for relief. The intent of the statute is to provide notice to the parties so as to avoid unnecessary litigation. Notice that is not given and received fails to accomplish the statutory objective, and fails to comply with the statute. Petitioner may accomplish written advance notice by showing certified mail receipt of the demand letter. Where certified mail is not accomplished due to absence of owner, hand delivery of a letter may be shown to be adequate notice.

Loveland, et al. v. Harbor Towers and Marina Condo. Assn., Inc.,
Case No. 00-0067 (Scheuerman / Final Order on Requests for Attorney's Fees / March 23, 2000)

- Where pre-litigation letter was sent by owner to association demanding that certain ballots used to pass amendment to declaration be set aside, and that the vote be rescinded, and where letter gave association five days to respond, after which arbitration petition would be filed, notice afforded by letter barely adequate under s. 718.1255, F.S. While it would have been the better practice to have given the association more time to respond to demands, petition was not filed immediately after the five days had passed, and it would have been possible for association during this time to indicate that the matter had been referred to its attorney.

Defenses (continued)

- general defenses – (continued)

Nargi v. Ocean Harbor Condo. Assn., et al.,
Case No. 99-1133 (Draper / Final Order on Attorney's Fees / September 30, 1999)

- Arbitrator rejected unit owner's defense to prevailing association's fees request that the association failed to respond to his inquiries. Inquiries do not provide a basis to deny attorney's fees if the association fails or refuses to respond to an inquiry once arbitration has commenced on the dispute. The failure to provide a substantive response to an inquiry will preclude the board from recovering fees and costs in any subsequent litigation, administrative proceeding or arbitration arising out of the inquiry. Further, s. 718.112(2)(d)2., F.S., do not require association to respond to the same inquiry, from the same owner, multiple times.

Oaks Unit III Condo. Assn., Inc. v. Hedges,
Case No. 94-0185F (Grubbs / Final Order / July 11, 1994)

- The fact that budget includes line item for attorney's fees is not an affirmative defense to motion for award of fees.

Octagon Towers Condo. Assn., Inc. v. Incandela, et al.,
Case No. 99-1625 (Powell / Final Order on Motion for Fees / October 28, 1999)

- Motion for fees denied where unit owners, who were indispensable parties in the underlying dispute, were not served, and petition was voluntarily dismissed because the violation (subdivision of unit) was cured. Service on tenant alone was insufficient. Section 718.303, F.S., was superseded by s. 718.1255, F.S.

Ovanes, et al. v. The Marina at The Bluffs Condo. Assoc. Inc.,
Case No. 02-5672 (Coln / Order Denying Motion for Rehearing / November 12, 2002)

- The provision in s. 718.1255, F.S., requiring that the petitioner provide pre-arbitration notice to the respondent along with a demand for the relief requested is not a jurisdictional impediment to hearing the case. The failure to provide pre-arbitration notice is an affirmative defense that must be timely raised by the respondent or it will be deemed waived. Certainly waiting until the case is disposed of and asserting the defense for the first time in a response to the petitioner's motion for prevailing party attorney's fees is not timely.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corp.,
Case No. 96-0383F (Scheuerman / Final Order on Motion for Attorney's Fees / November 10, 1998)

- Where owner in underlying case filed prior to October 1, 1997, specifically admitted fee liability, and sought only to argue the reasonableness of the fees, owner deemed to have waived his ability to argue that an award of fees under the prior statute was discretionary with the arbitrator.

Defenses (continued)

- general defenses – (continued)

Park View III Condo. Assn., Inc. v. Nelson,
Case No. 99-1678 (Pine / Final Order Awarding Attorney's Fees and Costs / October 6, 1999)

- Respondent's argument that she had not needed an attorney, and therefore the association had not really needed one either, was rejected as a defense to the motion for prevailing party attorney's fees. Respondent had ample opportunity to settle dispute before petition was filed, or to settle it in mediation ordered by the arbitrator; moreover, pursuant to s. 718.1255(4)(k), F.S., award of prevailing party's attorney's fees is mandatory.

Pines of Delray Condo. Assn., Inc. v. Wallace,
Case No. 99-0553 (Powell / Final Order on Motion for Attorney's Fees and Costs / April 30, 1999)

- Arbitrator rejected unit owners' argument that time devoted to the award and collection of attorney's fees is not compensable. Arbitrator awarded association prevailing party fees for two hours for settlement conferences and preparation of the motion for fees.

Ray v. Center Court Condo. Assn., Inc.,
Case No. 95-0177F (Goin / Final Order on Petitioner's and Respondent's Motions for Attorney's Fees and Costs / October 4, 1995)

- No attorneys fees awarded where association failed to respond to complaints filed by unit owners pursuant to s. 718.112(2)(a)2., F.S.

Rokest Condo. Assn., Inc. v. Weinberg, et al.,
Case No. 99-0876 (Powell / Final Order on Motion for Fees / October / 22, 1999)

- Motion for fees denied where, prior to filing of petition in underlying case, unit owners had not received written notice required by s. 718.1255(4)(b), F.S., that litigation or arbitration would result if violation was not corrected.

Sabine Yacht and Racquet Club Condo. Assn., Inc. v. Williamson,
Case No. 99-0003 (Anderson-Adams / Final Order on Attorney's Fees / March 11, 1999)

- Unit owners would not be awarded attorney's fees pursuant to s. 718.111(12)(b), F.S., where dispute involved alteration to the unit and did not involve access to official records.

- Unit owners would not be excused from paying prevailing association's fees and costs pursuant to s. 718.112(2)(a)2., F.S. Unit owners' request for official records access are not "inquiries" within the meaning of that provision of the statute.

Defenses (continued)

- general defenses – (continued)

Sea Breeze South Apartments Condo. Inc. v. Beck, et al.,
Case No. 02-5161 (Scheuerman / Final Order Dismissing Petition for Attorney's Fees /September 9, 2002)

- Where owner had sent a written inquiry to the association specifically pursuant to s. 718.112(2)(a)2., F.S., asking for guidance on the choice of replacement windows, which letter had been ignored by the association, the association was foreclosed from seeking an award of costs and attorney's fees incurred by association in subsequent arbitration proceeding seeking removal of the unapproved replacement windows.

Smokehouse Harbor Condo. Assn., Inc. v. Linsenmeyer,
Case No. 00-0378 (Draper / Final Order on Attorney's Fees / March 20, 2000)

- Prevailing party that failed to file motion for attorney's fees within 45 days of entry of final order would not be awarded fees. Request made prior to entry of final order, indicating that party would seek fees should he prevail, was a conditional request for fees (also required by Rule 61B-45.048(1), F.A.C.) requiring a follow-up motion as stipulated in Rule 61B-45.048(2), F.A.C.

Sunset Grove Condo. Assn., Inc. v. Finney,
Case No. 99-0372 (Powell / Final Order on Motion for Attorney's Fees and Costs / April 30, 1999)

- Where unit owner asserted that she was financially unable to pay the association's fees and costs, the arbitrator was nevertheless required to award fees to the prevailing party, under s. 718.1255(4)(k), F.S.

The 3 Kings Condo. Inc. v. Talsky, et al.,
Case No. 99-1977 (Draper / Final Order on Attorney's Fees / February 23, 2000)

- Where non-prevailing party raised defenses to petition for arbitration for the first time in their response to fee motion, despite having filed an answer to the petition, defenses would not be considered by the arbitrator.

Wooley, et al. v. Ocean Inlet Yacht Club Condo. Assoc., Inc.,
Case No. 02-5474 (Scheuerman / Final Order on Motion for Attorney's Fees / November 13, 2002)

- Time spent exploring a trial de novo is not incurred in the aribtration proceeding and would not be awarded.

Excessive/Reasonable

Alameda Isles Homeowners Assn., Inc. v. Meneilley,
Case No. 00-0714 (Scheuerman / Final Order on Motion for Attorney's Fees / May 22, 2000)

- Counsel who had practiced law for four years in a law firm that provides the bulk of its representation in community association law awarded $150/hr., rather than the $175/hr. sought.

Excessive/Reasonable (continued)

Alvares v. Club Atlantis Condo. Assn., Inc.,
Case No. 93-0091F (Scheuerman / Final Order / May 6, 1993)

- Requested award of $175.00 per hour exceeds fees customarily charged for similar arbitrations in community which range from $125.00 to $150.00 per hour, and $150.00 per hour was awarded.

Arcardi v. Leisure Beach South, Inc.,
Case No. 01-3447 (Scheuerman / Final Order on Motion to Clarify the Record / April 15, 2002)

- Where attorney was under a legal services contract calling for compensation at the rate of $59 per hour, legal services agreement did not bind the arbitrator in determining a reasonable hourly fee for counsel, where the agreement stated that the hourly rate provided in the agreement was not intended to bind the court in assessment of a reasonable hourly fee. However, by entering into the agreement, counsel as a matter of law agreed that the hourly fee provided was reasonable and customary. In the final analysis, the rate called for in the agreement was one indicator of a reasonable fee, where the agreement expressly permitted enhancement factors to be found by the court. Giving effect to this aspect of the agreement while considering that the sum of $150 per hour is the sum awarded most commonly for representation in these arbitration proceedings, the arbitrator awarded counsel, who has been in practice for 20 years, the sum of $150 per hour.

Ashley Oaks Condo. Assoc. Inc. v. Phillips, et al.,
Case No. 02-4894 (Gioia / Final Order Awarding Attorney's Fees and Costs / June 11, 2002)

- Respondent stated that he had consulted with another member of the Florida Bar and who advised that the hours requested was excessive. However, no documentation was provided in support of this contention. A review of the timesheets presented in support of the motion reveals no time entries that could be considered excessive. In that this case lasted over a year, generated a number of motions and ended in a full hearing, the hours requested are found to have been necessary for the successful litigation of this action.

The Barbados IV at Tarpon Cove Condo. Assoc., Inc. v. Mak,
Case No. 01-2843 (Pasley / Final Order Awarding Attorney's Fees and Costs / June 5, 2001)

- With the exception of 1 hour for provision of advance written notice of the dispute to the respondent as required by s. 718.1255(4)(b), F.S., activities that predate the drafting of the petition for arbitration are not recoverable.

Barenscheer, et al. v. Marina Tower Condo. Assn., Inc.,
Case No. 99-0559 (Scheuerman / Final Order on Motion for Attorney's Fees / April 26, 1999)

- Hourly fee of $175 awarded where counsel had been practicing for 20 years and had gained considerable experience in community association representation.

Excessive/Reasonable (continued)

Bayview Condo. Assn., Inc. v. Helmstetter, et al.,
Case No. 98-4354 (Scheuerman / Final Order on Request for Attorney's Fees / December 3, 1998)

- Hourly fees of $175 and $200 found excessive given typical rates charged by attorneys in the community for similar cases with similarity of subject matter and complexity involving tenant eviction. The sum of $150 per hour was awarded.

The Beaches of Longboat Key - South Owners Assn., Inc. v. Goldreyer,
Case No. 97-0304F (Oglo / Final Order on Attorney's Fees / July 25, 1997)

- The association, which prevailed on its claims for access to the owners' unit to provide pest control services and for the owners to remove their dog, was awarded $4,374.00 in attorney's fees. The arbitrator reduced the $180-an-hour rate sought to $150 an hour, based upon the amount customarily awarded for arbitration cases, and based upon the lack of affidavit by the association describing why its attorney's experience, reputation, and ability warrant charging a higher rate. The arbitrator also subtracted several hours as being inadvertent double charging by the association, and subtracted one hour from the three hours sought for preparation of the petition, on the grounds that the issues were fairly simple.

Bent Tree Villas East Condo. Assoc., Inc. v. Dolan
Case No. 00-1086 (Pasley / Final Order on Attorney's Fees and Costs / September 6, 2000)

- Prevailing parties are typically awarded 1.0 hour for the preparation and filing of their motions for attorney's fees in these arbitration proceedings.

- Activities required due to the inadequacy of the initial petition were denied.

Berg v. Lincolnwood Towers Condo., Inc.,
Case No. 99-0678 (Final Order on Motion for Costs and Attorney's Fees / May 28, 1999)

- Hourly rate of $175 awarded where counsel had five years of experience primarily in condominium matters.

The Boardwalk Condo. Assn., Inc. v. Lowney,
Case No. 99-0476 (Cowal / Final Order on Attorney's Fees / March 30, 1999)

- Where counsel claimed $185.00 per hour for fees and where his motion and affidavit did not reflect his experience in the field or his years practicing law, rate awarded was $150 per hour.

Brown v. Wellington L Condo. Assn., Inc.,
Case No. 95-0106F (Scheuerman / Final Order on Motion for Attorney's Fees / May 17, 1995)

- Hourly fee of $165.00, considering counsel's long-standing practice in the area of condominium law, was concluded to be a reasonable hourly fee.

Excessive/Reasonable (continued)

The California Club Condo. Assn., Inc. v. Waldman,
Case No. 98-5039 (Powell / Final Order on Motion for Attorney's Fees and Costs / October 16, 1998)

- Motion for fees dismissed where it was filed in excess of 45 days after final order in underlying case was entered. See, Rule 61B-45.048, F.A.C.

Calusa Club Village Condo. Building E Assn., Inc. v. Civil, et al.,
Case No. 94-0476F (Richardson / Final Order on Motion for Attorney's Fees / January 13, 1995)

- Because attorneys billed on a unit-billing rate of quarter hour intervals, the amount of time billed for specific activities was found to be excessive. Total of 22 hours reduced to 20 hours at $150/hour for award of $3,000.00.

Calusa Club Village Condo. Building Assn., Inc. v. Rodriguez, et al.,
Case No. 96-0610 (Powell / Final Order on Motion for Attorney's Fees / December 31, 1998)

- Where prevailing unit owner sought fees, association claimed that fees should be reduced or denied because fees were awarded to unit owner in circuit court following trial de novo, and much of the work in the arbitration case was duplicated in the circuit court action. The arbitrator did not reduce or deny fees claimed in the arbitration because the invoices in the two actions did not reflect that there was overlap in charges for specific items or for research.

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Herer,
Case No. 00-0477 (Pine / Final Order on Motion for Attorney's Fees and Costs / April 14, 2000)

- Time spent by association/petitioner's attorney in working out an amendment to the condominium documents and in seeking unit owner approval of same, which amendment would have permitted patio enclosures such as respondent's, is compensable. Likewise, time spent in discussing, planning, and negotiating settlement options is compensable. To hold otherwise would penalize petitioner for attempting to resolve the dispute non-adversarially.

- Status conferences and status reviews are not inappropriate in a long-drawn-out proceeding, and where reasonable the time is compensable.

- Where vast majority of time spent on case was spent by single attorney, and where motion and affidavit described experience and qualifications of main counsel, motion is in substantial compliance with Rule 61B-45.048, F.A.C., even if other attorneys' experience and qualifications are never mentioned. Other attorneys' time can still be compensated albeit at no higher than the prevailing rate.

Excessive/Reasonable (continued)

Carbone v. Seawatch at Jupiter Island Condo. Assn., Inc.,
Case No. 99-2091 (Scheuerman / Final Order on Request for Attorney's Fees / November 30, 1999)

- Where same issue had earlier been researched in conjunction with earlier-filed circuit court action, the sum of 8.8 hours for preparation of the answer deemed unreasonable; 5.0 hours allowed where law was not obscure and where state of the law was quite settled prior to filing of petition.

Carriage Houses of Fairfield Condo. Assn., Inc. v. Ott, et al.,
Case No. 98-4752 (Draper / Final Order on Attorney's Fees / September 24, 1998)

- Arbitrator rejected counter affidavit filed by non-prevailing respondents, stating that a reasonable time to spend on the prevailing party's case was only 10 hours, where a formal fact finding hearing had to be held in the case on respondents' affirmative defense of selective enforcement and where respondents' failure to comply with arbitration rules of procedure and the arbitrator's orders required that the petitioner take steps to protect its position in the arbitration.

Castle Beach Club Condo. Assn., Inc. v. Musil,
Case No. 98-3540 (Oglo / Final Order on Attorney's Fees and costs / April 23, 1998)

- The association claimed six hours of time related to the preparation of petition; the dispute was an action to enforce a clear provision of the declaration that prohibited unit owners from causing a nuisance and was not particularly complex. Only two hours awarded.

Catalina at High Point Condo. Assn., Inc. v. Furches,
Case No. 98-5404 (Cowal / Final Order on Attorney's Fees / January 28, 1999)

- Requested fee of $175.00 per hour deemed reasonable, in light of counsel's 15 years' experience in this field of law.

- Fees for activities undertaken prior to preparation and filing of petition and fee for anticipated activities not actually undertaken, not awarded.

Chelsea Bayview Condo. Assn., Inc. v. Brandt, et al.,
Case No. 97-0195F (Oglo / Final Order on Motion for Attorney's Fees / September 12, 1997)

- Where as the owner's attorney filed an affidavit supporting his particular expertise and experience in community association law, a rate of $175 per hour was awarded. No fees were awarded for work performed by the owner's attorney prior to the date that the association filed its petition.

Circle Villas Condo. Assn., Inc. v. Thompson,
Case No. 93-0345F (Goin / Final Order / February 14, 1994)

- Six hours for preparation of petition for arbitration is unreasonable where petition contained only one count and was quite routine.

Excessive/Reasonable (continued)

Circle Woods Owners Assoc. Inc. Of Venice v. Balazas, et al.,
Case No. 02-4841 (Gioia / Final Order Awarding Attorney's Fees and Costs / June 4, 2002)

- The time sheets presented to the Arbitrator show that 6.4 hours of attorney time and 8.9 hours of paralegal time were expended in the drafting of the petition in this case, for a total of 15.3 hours. In a similar case, a claim of 8.2 hours for "the preparation and filing of an adequate petition" was held to be excessive and the amount granted for that effort was reduced to 4 hours. See, Bent Tree Villas East Condominium Association, Inc. v. Maria Dolan, Arb. Case No. 00-1086, Final Order (September 16, 2000). Upon review of the complexity of the petition the Arbitrator that an award of 5 hours of attorney time would be appropriate.

Colonial Club Condo. Assoc., Section 1, Inc. v. Grunberg,
Case No. 00-0913 (Powell / Final Order on Motion for Costs and Attorney's Fees / August 31, 2000)

- Charges totaling 33.2 hours for preparation for and attendance at one-day hearing reduced to 16 hours, and 14 hours for review of hearing tapes and preparation of memorandum reduced to eight hours. Issue in underlying case was whether association could enforce its documents as recorded in the public records to require removal of washers and dryers. However, prevailing unit owner's counsel expended much time on exploring what unit owner was told by a realtor and association's motivation for enforcement, allegedly stemming from a disagreement over a purchase deposit. Such issues lacked materiality and did not necessitate such expenditure of attorney time.

Colony Point 6 Condo. Assn., Inc. v. Kaplan,
Case No. 98-4440 (La Plante / Final Order on Attorney's Fees / July 22, 1998)

- Hourly rate of $175.00 determined to be reasonable given attorney's reputation of 17 years practicing law, and expertise in condominium law.

Coren v. Summit Towers Condo. Assn., Inc.,
Case No. 96-0283F (Draper / Final Order on Attorney's Fees / November 1, 1996)

- Requested hourly fee of $250.00 per hour not awarded where petitioner's attorney was not very experienced in condominium law and there was no other justification advanced for high rate. $150.00 per hour awarded instead.

- Where hourly billings appeared inflated - such as six hours on motion for discovery and request for production – and unnecessary motions were filed – total fee request discounted by one-third.

Courtyards of Broward Condo. Assn., Inc. v. Nemirov,
Case No. 98-4803 (Scheuerman / Final Order on Motion for Attorney's Fees / September 28, 1998)

- Sum of 6.2 hours spent drafting routine petition found unreasonable. Time reduced to 4.0 hours, which included request for emergency injunctive relief.

Excessive/Reasonable (continued)

Croton Harbor Condo. Inc. v. Rusolen,
Case No. 02-5705 (Gioia / Final Order Awarding Attorney's Fees and Costs / December 27, 2002)

- The time sheets presented show 1.5 hours of attorney time for "future activities." This time is not recoverable, as it did not advance the litigation. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding.

Crystal Lake Condo. Assn., Inc. v. Denny,
Case No. 00-0105 (Pine / Final Order on Request for Attorney's Fees / February 28, 2000)

- Slightly above-average expenditures of time are not unreasonable when hourly rate asked ($125/hour) is commensurate with attorney's limited experience.

Cypress Chase Condo. Assn. "C", Inc. v. McComie,
Case No. 00-2429 (Draper / Final Order on Attorney's Fees /January 31, 2000)

- Attorney's fees incurred for having s. 718.1255(4)(b), F.S., pre-arbitration notice drafted would not be awarded. Nor would fees be awarded for work on motion for expedited determination of jurisdiction, as the motion was totally unnecessary (jurisdiction over nuisance claims being well established).

Cypress Chase North Condo. #2 Assoc., Inc. v. Young,
Case No. 00-0788 (Pasley / Order Denying Motion to Set Aside Default and Denying Motion for Rehearing / September 28, 2000)

- Where Counsel has experience in condominium law and practices in the Palm Beach area, the requested rate of $150 per hour was awarded.

Davila v. International Park Condo. II Assn., Inc.,
Case No. 98-3693 (Draper / Final Order on Attorney's Fees / June 26, 1998)

- Fee request of $175/hr was excessive where attorney had been practicing law only four years.

Deer Creek Condo. Country Club Estates I Assn., Inc. v. Marracino,
Case No. 99-1463 (Pasley / Final Order on Attorney's Fees / September 10, 1999)

- Request for 18.80 hours in fees was deemed to be excessive, and was reduced to 6 hours in a case where the association filed only two pleadings and the issues were neither novel nor complicated. Entries on the billing statement related to the drafting of the petition were reduced from 9.8 hours to 3 hours.

Desy v. River Key Condo. Assn., Inc.,
Case No. 93-0082F (Price / Final Order on Motion for Attorney's Fees and Costs / May 20, 1993)

- 34 hours claimed for conferences between the attorney and the client excessive where the records submitted do not disclose the nature of the conferences.

Excessive/Reasonable (continued)

Eastfield Slopes Condo. Assn., Inc. v. Scaglione, et al.,
Case No. 99-0240 (Scheuerman / Final Order on Request for Attorney's Fees / August 13, 1999)

- Association not awarded fees incurred to file an amended pleading because original petition named incorrect tenant.

Eastfield Slopes Condo. Assn., Inc. v. Velez, et al.,
Case No. 98-3853 (Scheuerman / Final Order on Motion for Attorney's Fees and Costs / October 21, 1998)

- Time spend drafting routine petition reduced from 3.5 to 2.0 hours.

Egret Pointe Condo. Assn., Inc. v. Luciano,
Case No. 99-1891 (Scheuerman / Final Order on Motion for Attorney's Fees / October 20, 1999)

- The sum of .40 hours for petitioner to review standard order requiring answer directed to respondent and forward the same to client deemed excessive; no fees awarded for this activity.

- Where association sought to recover for 3.2 hours of attorney time spent in connection with preparation of its motion for summary judgment, where rules did not allow filing of motion for summary judgment, but where summary final order was ultimately issued and motion was instrumental in preparation of final order, 1.6 hours awarded for this activity.

El Sevillano Townhomes Condo. Assn., Inc. v. Orozco,
Case No. 97-0331F (Goin / Final Order on Petitioner's Motion for Award of Attorney's Fees and Costs / July 23, 1997)

- Hourly rate of $175 determined not to be unreasonable where attorney had practiced in the area of condominium law for a number of years, was well known in the field, and where much of the work performed was by other members in the firm who were compensated at a lower hourly rate.

Ensenada Condo. Assn., Inc. v. Chavez,
Case No. 98-3932 (La Plante / Final Order on Attorney's Fees / May 26, 1998)

- Two hours to prepare petition and send letter to client found excessive. One hour awarded. 1.5 hours requested for preparation of motion for attorney's fees found excessive; reduced to one hour.

Estes, et al. v. Lido of Pinellas Condo. Assn., Inc.,
Case No. 95-0421F (Draper / Final Order on Attorney's Fees / May 31, 1995)

- Duplication of services by attorney and paralegal will not be compensated.

- Qualified representative's services, described as consultant services, not compensable.

Excessive/Reasonable (continued)

Fair Oaks North, Inc. v. Manista,
Case No. 99-1358 (Pine / Final Order on Attorney's Fees / August 17, 1999)

- Respondents' fierce and tenacious defense of their illegal awning (and prospective patio) occasioned a remarkably high number of hours spent by petitioner's attorney, considering relative simplicity of issues. Particularly in light of the lack of any objection by respondents to motion for fees, fees awarded as requested.

Fairview of the California Club Condo. Assn., Inc. v. Rosenfeld,
Case No. 93-0040F (Player / Order on Petitioner's Motion for Attorney's Fees / March 22, 1993)

- Hourly rate of $150/hour is reasonable. Amount incurred prior to preparation and filing petition for arbitration not awarded.

Forest Hill Gardens East Condo. Assoc., Inc. v. Garcia,
Case No. 02-4674 (Pasley / Final Order Awarding Attorney's Fees and Cost / April 30, 2002)

- The requested hourly rate of $200 reduced to $185 per hour where counsel has been licensed to practice law since 1997. The hourly rate of $200 has been awarded where counsel has 20 plus years of practice in the area of condominium law.

4000 Island Boulevard Condo. Assoc. v. DeBeer, et al.,
Case No. 00-0859 (Powell /Final Order on Motion for Fees and Costs / June 30, 2000)

- Charge for 3.75 hours to file a motion to stay the arbitration proceedings while the association filed a complaint for a temporary injunction in circuit court, and for preparation of the proposed circuit court complaint which was attached to the motion, was denied. The motion for stay was without any merit and did not significantly advance petitioner's case.

Frank v. Poinciana Place Condo. Assn., Inc.,
Case No. 94-0163F (Scheuerman / Final Order / May 20, 1994)

- 3.0 hours awarded for preparation of answer and defenses to petition where it was necessary for association counsel to review the extended and tortured history existing between the association and petitioning unit owner in order to adequately respond and give historical perspective to the issues sought to be raised.

The Gardens at Pembroke Lakes Condo. Assoc., Inc. v. Clementi,
Case No. 01-2368 (Pine / Final Order on Motion for Attorney's Fees / March 21, 2001)

- An award of 7.6 hours at $150 per hour is not excessive for a case where even token defense is made.

The Gardens North Condo. Assn., Inc. v. Brown,
Case No. 95-0229F (Grubbs / Final Order on Fees / September 13, 1995)

- Reasonable time spent for preparing petition for arbitration, response to show cause order, and motion for fees was 5.0 hours where there was no participation by respondents.

Excessive/Reasonable (continued)

Gulf Breeze at Vanderbilt Condo., Inc. v. Mleczko,
Case No. 99-2289 (Scheuerman / Final Order on Request for Attorney's Fees / February 15, 2000)

- The sum of .30 hours for reviewing the standardized order requiring answer directed to the opposing party and mailing it to the client is excessive and is not awarded.

Haidar v. Tarpon Woods Condo. IV Assoc., Inc.,
Case No. 00-1526 (Pine / Final Order Awarding Attorney's Fees / October 13, 2000)

- Counsel who practices law since 1977, who has devoted a substantial portion of his practice to community association law for past 18 years will be awarded $175 per hour where that is the amount requested.

Harbour East Condo. Assn., Inc. v. Morrissey, et al.,
Case No. 98-4671 (Cowal / Final Order on Attorney's Fees / January 15, 1999)

- 1.1 hours claimed for variety of activities undertaken at onset of arbitration case, including a "periodic review of file" before any pleadings verified or orders entered, and a "review of ORA" directed to other party, not reasonable and disallowed.

- Compensation for activities predating preparation and filing of petition disallowed.

Heather Hill Master Condo. Assoc., Inc. v. Freeman,
Case No. 00-1064 (Pasley / Final Order on Attorney's Fees / August 21, 2000)

- Time spent on activities resulting from the petitioner's filing of the wrong condominium documents with the petition is not recoverable.

- Time spent on activities that appear to be unrelated to the present dispute is not recoverable.

Helen Mar Condo. Assn., Inc. v. Marshall,
Case No. 98-5146 (Draper / Final Order on Attorney's Fees / February 5, 1999)

- Attorney with eighteen years of experience, much of it in area of condominium law, and practicing in Coral Gables area, awarded fees at the rate of $175.00 per hour.

Hitching Post Co-Op, Inc. v. Ryan,
Case No. 98-5410 (Anderson-Adams / Final Order Awarding Attorney's Fees /January 20, 1999)

- Rate of $175 per hour not justified where attorney for prevailing party failed to state his level of experience in condominium law and failed to state any special skills or abilities he possessed. The factual and legal issues were not complex, and did not require special expertise, strategy, or extensive research.

Excessive/Reasonable (continued)

Imperial Point Gardens Condo., Inc. v. Byrd,
Case No. 01-3941 (Pasley / Final Order Awarding Attorney's Fees and Cost / December 28, 2001)

- Where counsel obtained license to practice law in the State of Florida in 1995, the hourly rate of $200 exceeds the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience.

International Village Assn., Inc. v. Marropodi,
Case No. 97-0321F (Goin / Final Order on Petitioner's Motion for Prevailing Party Attorney Fees / July 18, 1997)

- Association's request for 8.2 hours to file a petition, review the Order Requesting Answer, prepare a motion for default, motion for final order, and motion for attorney's fees was excessive. Association instead awarded 4.0 hours.

Irwin v. Emerald Pointe Condo. Assn., Inc.,
Case No. 94-0095F (Player / Final Order / May 9, 1994)

- Unit owner compensated for time spent by attorney reviewing declaration and case law prior to drafting petition for arbitration because it was work related to the arbitration proceeding.

- Requested fee of $175.00 per hour permitted where no objection to hourly rate filed.

The Island House Apartments, Inc. v. Noller,
Case No. 98-3093 (Scheuerman / Final Order on Request for Attorney's Fees / March 8, 1999)

- An amount of fees is reasonably expended if it represents that amount of time that would be ordinarily spent by lawyers in the community to resolve this particular type of dispute. It is not necessarily the number of hours actually spent on particular activities.

Island Sun Condo. Assoc., Inc. v. Olsen, et al.,
Case No. 00-0876 (Scheuerman / Final Order on Motion for Attorney's Fees / August 28, 2000)

- Where counsel spent 4.0 hours on preparation of answer, arbitrator determined that 3.0 hours should be awarded where answer, although entirely adequate, was not lengthy, and raised no defenses that required extensive research or preparation.

- Where unit owner called only himself and association president as witnesses at final hearing, the sum of 8.5 hours spent in preparing for the final hearing excessive; time awarded was 4.0 hours.

Kamhi v. Pine Island Ridge Condo. F Assn., Inc.,
Case No. 99-0092 (Draper / Final Order on Attorney's Fees / April 21, 1999)

- Services of attorney would be awarded at the rate of $150.00 per hour, not $175.00 per hour requested.

- Fee request failed to include information as to attorney's experience.

Excessive/Reasonable (continued)

Kelly Greens Single Family Condo III Assn., Inc. v. Mogavero,
Case No. 94-0477F (Price / Final Order on Motion for Attorney's Fees and Costs / March 14, 1995)

- The mere fact that other petitions are filed by an association against other unit owners on the same issue does not, in and of itself, justify a reduction in the attorney fees requested, but may be considered in determining whether the time requested for preparation of the petition was reasonable.

Kendall Lakes East Lakeview Townhome Condo. Assn., Inc. v. Pelaez,
Case No. 99-1178 (Pine / Final Order on Attorney's Fees / October 27, 1999)

- Where documentation filed in support of fee motion reflects use of quarter-hour billing increments, time awarded for brief, routine tasks was reduced to a more realistic .1 hour per task.

- Two hours awarded as a reasonable amount of time to wind up the case, once merits became moot, and to draft and file the motion for attorney's fees.

Kingston Shores Management Assn., Inc. v. Mayhew,
Case No. 94-0103F (Scheuerman / Final Order / April 1, 1994)

- 2.1 hours claimed for preparation of a routine petition requiring no special preparation or treatment, considering counsel's longstanding experience, is excessive, and 1.0 hour awarded for drafting petition.

La Mirage of Harbor Village Condo. Assn., Inc. v. Ortwein,
Case No. 94-0219F (Scheuerman / Final Order / June 30, 1994)

- For preparation of demand letter, .80 hour requested; reduced to .20 hour.

- 2.5 hours claimed for preparation of routine petition reduced to 1.0 hour.

- 2.3 hours claimed for preparation of motion for attorney's fees reduced to 1.0 hour.

Lamar v. La Arboleda Condo. Assn., Inc.,
Case No. 93-0354F (Goin / Final Order / April 15, 1994)

- $200.00 per hour claimed by counsel exceeds the fees customarily charged for similar arbitrations in the South Florida legal community, and rate awarded was $150.00 per hour.

The Landings Condo. Assn., Inc. v. Patterson,
Case No. 95-0123F (Scheuerman / Final Order on Request for Attorney's Fees / April 18, 1995)

- Request of 7.9 hours for memorandum of law excessive where document was 9¼ pages long, and a large portion of the memorandum explored issues outside the scope of the issues decided in the final order; 3.0 hours awarded for that entry. Also, it was not demonstrated that attorney with less practice in condominium law should not be awarded $150.00 per hour.

Excessive/Reasonable (continued)

Laurel Oaks at Pelican Bay Condo. Assn., Inc. v. Athans,
Case No. 93-0393F (Goin / Final Order / January 27, 1994)

- Fees of $3,720.00 awarded ($4,612.00 requested) in favor of unit owner who prevailed in defense of association's attempt to have dog removed. 7.95 hours is an excessive amount of time to spend preparing answer to petition, considering experience of attorney and hourly rate of $160.00 per hour. 4.0 hours time awarded for preparation of answer and 9.0 hours spent preparing memorandum of law which was helpful to arbitrator was awarded.

Leisure Living Estate Condo. Assn., Inc. v. Grieve,
Grieve v. Leisure Living Estate Condo. Assn., Inc., (consolidated)
Case No. 98-4492 (Anderson-Adams / Final Order on Attorney's Fees / March 3, 1999)

- Association's attorney's travel time disallowed where association made no claim that competent counsel could not be obtained locally.

Llopiz, et al. v. Sterling Condo. Assn., Inc.,
Case No. 97-0427F (Draper / Final Order on Attorney's Fees / December 2, 1997)

- Fees of association's attorney, hired to coordinate with the insurance company - provided attorney, discounted by one-half where it appeared that a portion of his services duplicated insurance counsel's service or consisted of a review of her work.

Loveland, et al. v. Harbor Towers and Marina Condo. Assn., Inc.,
Case No. 00-0067 (Scheuerman / Final Order on Requests for Attorney's Fees / March 23, 2000)

- Where attorney sought to recover the hourly fee of $350 for work done in reference to arbitration proceeding, arbitrator awarded $175 per hour instead, despite 30 years experience and teaching credentials. The hourly fee requested exceeded fees typically charged by longstanding practitioners in the area of condominium law for services in arbitration proceedings involving similar issues.

- Time spent drafting various petitions and amended petitions (11.2 hours) reduced to 3.0 hours where case was neither factually nor legally complex, and where petition and amended petitions contained errors requiring re-drafting. Facts were left out and no legal basis shown for relief requested.

Margate Village Condo. Assn., Inc. v. Arghyrou,
Case No. 98-5424 (Powell / Final Order on Motion for Attorney's Fees / March 11, 1999)

- Charges incurred well before the filing of the petition were disallowed as not incurred in the arbitration proceeding.

Marina Tower of Turnberry Isle Condo. Assn., Inc. v. Sitzer,
Case No. 95-0073F (Richardson / Order Awarding Partial Attorney's Fees / June 27, 1995)

- Hourly fee claimed of $250.00 per hour is outside range normally charged by attorneys practicing for a number of years in condominium law; $150.00 per hour awarded to association.

Excessive/Reasonable (continued)

Midman v. Sun Valley East Condo. Assn., Inc.,
Case No. 99-2011 (Draper / Final Order on Attorney's Fees / December 28, 1999)

- While fee request was not so excessive that it shocked the conscience of the arbitrator, overall request exceeded a reasonable sum. For example, association's attorney spent 19 hours reviewing the petition, in conferences, and drafting an answer to the petition. Only 27.4 hours of 72.4 hours spent on the case would be awarded.

Miller Villas Condo. Assoc., Inc. v. Lichtenstein,
Case No. 00-1277 (Pasley / Final Order on Motion for Attorney's Fees and Cost / August 30, 2000)

- Where the petitioner prevailed on 3 of the 4 issues and its billing statement did not break down the amount of time spent on each claim, the Arbitrator may reduce the amount of fees awarded on the basis of the amount of time reasonably expended to litigate the case.

Mirage Condo. Assoc. Inc. v. The Estate of Abilio Amargo, by and through its Personal Representative to be named,
Case No. 02-5440 (Scheuerman / Final Order on Motion for Attorney's Fees / September 23, 2002)

- Time spent by counsel after issuance of the final order and prior to the preparation of the motion for attorney's fees is not incurred in the arbitration proceeding and is not compensable.

Nettles Island, Inc. v. Barrett,
Case No. 94-0221F (Richardson / Final Order on Motion for Attorney's Fees and Costs / December 13, 1994)

- Since bill for expert witness fee of $200.00 was not supported by time and hourly rate record and was clearly excessive for approximate one hour of work for a condominium manager, only the statutory expert witness fee of $10.00 for one hour would be awarded pursuant to s. 92.231, F.S.

Neumann v. Lakeshore Village of Meadowood Condo. Assn., Inc.,
Case No. 97-0412F (Scheuerman / Final Order on Motion for Attorney's Fees / December 31, 1997)

- Fees incurred prior to the preparation and filing of the petition is not incurred in the proceeding, and is not recoverable. The sum of 14.4 hours spent in preparation for trial found to be excessive given the number and nature of the exhibits and witnesses and issues involved; 10 hours allowed.

New Hampton at Century Village Condo. III Assn., Inc. v. Brocato,
Case No. 98-4380 (Draper / Final Order on Attorney's Fees / December 18, 1998)

- $185.00 /hour fee exceeds that customarily charged, reduced to $150.00 /hour.

Excessive/Reasonable (continued)

Northgard v. Bayview Point South Condo. Assn., Inc.,
Case No. 94-0204F (Scheuerman / Order on Petitioners' Motion for Prevailing Party Attorney's Fees / July 11, 1994)

- Requested hourly rate of $175.00 per hour resisted and replaced with $150.00 per hour.

Ocean Riviera Assn., Inc. v. Mahayni,
Case No. 94-0102F (Player / Final Order / May 13, 1994)

- In determining hours reasonably expended, arbitrator is not required to accept hours stated by counsel. Reasonably expended hours is not necessarily the number of hours actually expended where petition is similar to others filed by counsel and arbitration was routine and simple. 4.1 hours for review of file and preparation of petition for arbitration reduced to 2.0 hours.

O'Neil v. Tareyton, Inc.,
Case No. 02-4878 (Gioia / Final Order Awarding Attorney's Fees and Costs / June 7, 2002)

- The time sheets presented show 2.5 hours attorney time for activities preceding the drafting and filing of the petition. Respondent request that two hours of the time be disallowed. This time is not fully recoverable as it occurred prior to the arbitration proceeding. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993). However, as that section imposes certain requirements on a petitioner preceding the filing of the petition, including pre-arbitration notice, one hour of attorney time is routinely deemed recoverable and is hereby awarded.

Oross, et al. v. Boca Linda North Condo, Assn., Inc.,
Case No. 98-5403 (Draper / Final Order on Attorney's Fees / February 23, 1999)

- $165.00/hour reasonable for attorney with 12 years experience with frequent appearances before condominium arbitration section arbitrators and who practices in the South Florida area.

Ovanes, et al. v. The Marina at the Bluffs Condo. Assoc. Inc.,
Case No. 02-5672 (Coln/ Final Order on Attorney's Fees / October 29, 2002)

- The sum of 18.5 hours requested by the association's attorney was found to be unreasonable. The association filed three pleadings: a motion to dismiss, an affidavit in support of the motion to dismiss, and the request for attorney's fees. The issues raised in the motion to dismiss were neither novel nor complex and required only a minimal expenditure of time. The association's request was reduced to 6 hours.

Park East Home Owners Assn., Inc. v. Neu,
Case No. 94-0400F (Goin / Final Order on Petitioner's Motion for Attorney's Fees and Costs / November 29, 1994)

- $175.00 per hour is not within the range of fees customarily charged for similar arbitrations in the south Florida legal community.

Excessive/Reasonable (continued)

Park Lake Village Condo. Assn., Inc. v. Taylor,
Case No. 93-0171F (Grubbs / Order on Petitioner's Motion for Attorney's Fees / July 15, 1994)

- Where motion is a standard motion filed by the firm and does not contain any allegations related to the particular case other than time allocations, 1.5 hours not awarded; instead, .5 hour awarded.

Parkside Condo. Assoc. Inc. v. Valdez,
Case No. 02-5211 (Scheuerman / Final Order on Motion for Attorney's Fees / August 9, 2002)

- Excessive - Where attorney spent 13.5 hours preparing for a final hearing that lasted 2-3 hours arbitrator found 8.0 hours of preparation time was reasonable and hence deducted 5.5 hours.

Park View III Condo. Assn., Inc. v. Nelson,
Case No. 99-1678 (Pine / Final Order Awarding Attorney's Fees and Costs / October 6, 1999)

- Where attorney's only justification for fee rate of $185.00 per hour is that he has practiced for twelve years, and where dispute was not complex and did not occur in the Miami area, rate reduced to $175.00 per hour.

Pine Island Ridge Condo. G Assoc., Inc. v. Delguidice,
Case No. 00-1281 (Pine / Final Order on Motion for Attorney's Fees / August 25, 2000)

- Counsel who has practiced law in Florida and in Condominium field for over 27 years entitled to $200 per hour.

Pine Island Ridge Condo. G Assoc., Inc. v.Faugno,
Case No. 01-2520 (Pine / Final Order on Motion for Attorney's Fees and Cost / July 27, 2001)

$200 per hour is not excessive where counsel has practiced law in this State for over 27 years and is knowledgeable in the field of condominium law

Pine Ridge at Haverhill Condo. Assn., Inc. v. Zimmer,
Case No. 93-0408F (Price / Final Order on Motion to Determine and Award Reasonable Attorney's Fees / February 18, 1994)

- One hour of attorney's fees awarded for preparation of simple petition for arbitration; fees incurred prior to preparation of the petition are not recoverable.

Palm Court Owners Assn., Inc. v. Palm Bay Development Corp.,
Case No. 96-0383F (Scheuerman / Final Order on Motion for Attorney's Fees / November 10, 1998)

- Hourly fee claimed of $175.00 excessive considering the nature of the proceeding, the issues involved, and the amounts customarily charged for similar arbitration cases in the community in which the condominium is located; fee reduced to $150.00 per hour.

Excessive/Reasonable (continued)

Palm Court Owners Assn., Inc. v. Palm Bay Development Corp., (continued)
Case No. 96-0383F (Scheuerman / Final Order on Motion for Attorney's Fees / November 10, 1998)

- Attorney would not be compensated for performing routine ordinary office functions such as faxing documents; neither would the paralegal's fee be awarded for this function.

Parker Dorado Condo. Assn., Inc. v. Daddona,
Case No. 99-1247 (Pasley / Final Order on Attorney's Fees / July 9, 1999)

- Association compensated at the rate of $190.00 per hour for the legal services of its attorney who has been licensed to practice law in the state of Florida since 1980, has much experience in the area of condominium law, and practices in the Coral Gables area.

- A request for 1.5 hours to prepare the motion for attorney's fees was reduced to 1 hour because attorney's billing statement does not contain an entry to substantiate this request.

Pencor Financial Corporation, et al. v. Majestic Tower I Condo. Assn., Inc.,
Case No. 96-0110F (Scheuerman / Final Order on Motion for Costs and Attorney's Fees / March 29, 1996)

- Where owner sought fees of $250.00 per hour, rates exceeded reasonable recovery. The sum of $150.00 per hour awarded.

Pine Ridge at Lake Tarpon Village II Condo. Assn., Inc. v. Conroy, et al.,
Case No. 99-0936 (Powell / Final Order on Motion for Attorney's Fees and Costs / July 30, 1999)

- Association would be awarded .80 hour for attorney's preparation of motion for fees; however, time spent preparing a previous notice that association intended to seek attorney's fees would not be awarded where the prayer for fees had already been raised in the petition.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Mourandian, et al.,
Case No. 99-0119 (Scheuerman / Final Order on Motion for Attorney's Fees / April 20, 1999)

- Fees paid at the rate of $195.00 per hour exceeded rates typically charged for similar services in similar cases; rate awarded was $150.00 per hour, the amount most commonly charged by condominium attorneys.

Portofino South Condo. Assn., Inc. v. Caruso,
Case No. 99-0503 (Cowal / Final Order on Attorney's Fees / August 4, 1999)

- Association would be awarded its attorney's fees at the rate of $200 per hour where its counsel had 15 years experience as an attorney, practiced extensively in the area of community association law, and operated in the West Palm Beach area.

Richardson v. Sierra Condo. Apts. Assn., Inc.,
Case No. 99-0898 (Pine / Final Order on Motion for Attorney's Fees / January 31, 2000)

- $200 per hour is not excessive for attorney with 20+ years' experience who claimed remarkably brief expenditures of time (particularly when no response to fees motion was filed).

Excessive/Reasonable (continued)

Richardson v. Sierra Condo. Apts. Assn., Inc., (continued)
Case No. 99-0898 (Pine / Final Order on Motion for Attorney's Fees / January 31, 2000)

- Attorney who cites no qualifications or experience in fees motion or supporting documents has not justified $165 per hour rate to handle routine motion for award of fees; $150 per hour awarded.

Richardson, et al. v. Jupiter Bay Condo. Assoc., Inc.,
Case No. 02-5207 (Scheuerman / Final Order on Motion for Attorney's Fees / November 1, 2002)

- The sum of $300 per hour exceeds the sums typically charged by attorneys with 32 years of practice in the Palm Beach area for representation in similar cases, and the hourly fee reduced to $225.

The Riviera at Coral Lakes Condo. Assn., Inc. v. Torra,
Case No. 98-3694 (Draper / Final Order on Attorney's Fees / June 5, 1998)

- Time spent by attorney preparing notice of filing exhibits and collating exhibits is clerical work which does not require an attorney's attention. Such charges will not be included in fee award.

Sanders v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,
Case No. 97-2322 (Draper / Final Order on Attorney's Fees / April 9, 1998)

- 6.3 hours spent to draft fees motion and affidavits was excessive. Only 2.0 hours reasonably spent.

Sarasota Lakes Co-Op, Inc. d/b/a Sarasota Lakes RV Park v. Paoline, et al.,
Case No. 96-0410F (Draper / Order on Respondents' Motion For Award Of Attorney's Fees and Costs / December 31, 1996)

- $200.00/hr fee is excessive, reduced to $150.00/hr.

- $80.00/hr charge for paralegal services awarded; association objected to the hourly amount but failed to cite any evidence to support the unreasonableness of the rate.

- Time billed for paralegals to serve witness subpoenas was not reasonable where cost per witness subpoena was $58.00, as it exceeds $20.00 rate set by statute for sheriff's service and $25.00 awarded in other arbitrations.

Seascape Club Condo. Assn., Inc. v. Frankel, et al.,
Case No. 99-0597 (Scheuerman / Final Order on Motion for Attorney's Fees / April 20, 1999)

- Association compensated at $175.00 an hour for the activities of its attorney. While sum was on the high side of reasonable, considering the experience of counsel and the subject matter of the case, sum was awarded.

- 50 hour spent reviewing standard order requiring answer directed to respondent would not be compensated. Counsel had longstanding experience with arbitration program.

Excessive/Reasonable (continued)

Seaside Resort, Inc. v. Gaddis,
Case No. 93-0094 (Player/ Final Order on Respondents' Motion and Addendum to Motion for Attorney's Fees/ November 8, 1993)

- Hourly rate of $175/hour, while quite high, is not unreasonable.

- Attorney's fees not awarded for clerical tasks such as faxing documents.

Senek v. The Riverside Club of Ft. Myers, Inc.,
Case No. 99-1268 (Pasley / Final Order on Attorney's Fees / July 19, 1999)

- The association was compensated at the rate of $195.00 per hour for the legal services of its attorney because the association's attorney has been licensed to practice law in the state of Florida since 1960 and he practices in the southwestern region of the state (where $195.00 per hour is not an unusual rate).

Shields v. Versailles Gardens I Condo. Assn., Inc.,
Case No. 98-4609 (Draper / Final Order on Attorney's Fees / September 24, 1998)

- Hourly rate of $200 was too high where attorney had little experience in condominium arbitrations and only a small percentage of his practice was related to condominium law; $150 awarded instead.

- Time spent on correcting petition in order to state a claim within the arbitrator's jurisdiction would not be compensated. 2.0 hours total awarded for petition.

Sievers v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,
Case No. 97-2386 (Draper / Final Order on Attorney's Fees / March 11, 1998)

- Fees of between $150 and $185 rejected. Absent justification for rates in excess of $150 per hour, only $150 per hour would be awarded.

Silver Thatch Atlantic Plaza Condo. Assn., Inc. v. Kavanagh,
Case No. 94-0512F (Draper / Final Order on Attorney's Fees and Costs / January 31, 1995)

- 80 hour time claimed for review of an order requiring answer directed to the other party excessive; .20 hour awarded.

Singer v. Quadomain Recreation Assn. I, Inc.,
Case No. 95-0405F (Richardson / Final Order on Motion for Attorney's Fees / December 5, 1995)

- 21.60 hours unreasonable for arbitration where only three pleadings and a few documents filed, one prehearing conference held, and the petition was dismissed early in the proceeding. Time reduced to 6.0 hours at $150.00 per hour.

Spanish Trace Condo. Assn. Inc. v. A.J.E. International Corp., et al.
Case No. 99-1063 (Pine / Final Order on Attorney's Fees / June 23, 1999)

- Fees will not be awarded for a pleading that is not timely filed and did nothing to further prosecution of petitioner's case, and that, in fact, was filed in response to the Final Order.

Excessive/Reasonable (continued)

Spanish Trace Condo. Assn., Inc. v. Murillo,
Case No. 99-1254 (Pine / Final Order on Attorney's Fees / July 16, 1999)

- One third of case preparation time disallowed as excessive where four nearly identical petitions were being filed at once. An economy of scale is expected under such circumstances. Hourly rate of $185 is reasonable in light of attorney's 17 years of experience and fact that practice is located in Miami.

Stegeman v. Harbor Towers Owners Assn., Inc.,
Case No. 99-1873 (Draper / Final Order on Attorney's Fees / November 9, 1999)

- Attorney located in Sarasota with four years experience would not be awarded $175/hr. Fact that the case involved difficult issues and attorney has spent the last 2-1/2 years concentrating on condominium, homeowner, and cooperative association issues merits a higher than usual rate, however, of $160/hr.

Stone, et al. v. Pell Manor Condo. II Assn., et al.,
Case No. 95-0266F (Draper / Final Order on Respondent's Motion to Assess Attorney's Fees and Costs / October 26, 1995)

- "Average" hourly rate of $130.00/hour awarded, instead of $175.00/hour requested, where there was no affidavit from the attorney (as to his experience, reputation and ability) in support of the higher rate.

Sunset Grove Condo. Assn., Inc. v. Finney,
Case No. 99-0372 (Powell / Final Order on Motion for Attorney's Fees and Costs / April 30, 1999)

- Where attorney had practiced law since 1977 and was board certified in real estate, hourly rate of $175 held reasonable.

Terzis v. Ocean Dunes of Hutchinson Island Condo. Assn., Inc.,
Case No. 95-0122F (Draper / Final Order on Petitioner's Motion for Award of Attorney's Fees and Costs / May 25, 1995)

- Fees requested overall were so excessive as to shock the conscience of the arbitrator. 63 hours were spent on a simple case involving statutory and document violations, no counterclaims, discovery or evidentiary hearing. It would be pointless to require petitioners to separate out claims for services by issue as the overall request was so excessive.

Tivoli Trace Condo. Assoc., Inc. v. Jurcik,
Case No. 01-2331 (Scheuerman / Final Order on Request for Attorney's Fees and Costs / March 6, 2001)

- Where counsel spent 14.7 hours preparing for the final hearing that lasted 5 hours at which counsel called 3 witnesses, preparation time reduced to 10 hours.

Towers of Quayside No. 4 Condo. Assoc., Inc. v. Garami, et al.,
Case No. 01-2776 (Pine / Final Order Awarding Attorney's Fees and Costs / July 27, 2001)

- Respondent's vigorous defense during proceedings on merits justifies unusually large expenditures of time by petitioner's attorney.

Excessive/Reasonable (continued)

Tradewinds at Dos Lagos Condo. Assn., Inc. v. Mazzaferro,
Case No. 99-1524 (Pasley / Final Order on Attorney's Fees / September 29, 1999)

- Although one of the association's attorneys has been licensed to practice law in the state of Florida since 1973, the rate of $225.00 per hour for his legal services exceeded the rate routinely awarded in similar arbitration cases. Therefore, the rate was reduced to $175.00 per hour.

Tropical Park Villas Condo. Assoc., Inc. v. Cabrera, et al.,
Case No. 00-0718 (Pine / Final Order on Motion for Fees / June 21, 2000)

- Where attorney requests a rate of $175 to handle merits of the case but requests rate of $190 to handle fees motion with no explanation for increase, all of the attorney's awarded time will be compensated at $175 per hour.

- Where portion of fees affidavit seeking reimbursement for preparation of fees motion contained error a -reasonable expenditure of one hour for preparation of fees motion awarded.

Twin Fountains Club Owners Ad-Hoc Committee et al v. Twin Fountains Club,
Case No. 02-4550 (Scheuerman / Final Order on Motion for Attorney's Fees / May 8, 2002)

- Where association was the main reason why fees were so high in the case, the association cannot be heard to complain in the midst of the fees proceeding that fees are excessive. Deficiencies in the association's motion to dismiss, motion for more definite statement, and initial answer created several waves of pleadings, and the nature of the association's answer and affirmative defenses required that the owners spend additional time preparing for the final hearing.

- Owners' attorney spent excessive preparation time for final hearing where counsel spent 24.5 hours preparing for a 4-5 hour final hearing with only 3 main witnesses and 2 instances of denial of access to the official records.

- Prevailing owners not awarded time spent to counsel traveling to site of the final hearing where owners did not allege or prove that competent counsel was not available at the location of the final hearing.

Venetian Condo. Inc. v. Cohen,
Case No. 97-2517 (Draper / Final Order on Attorney's Fees / March 11, 1998)

- Hourly rates of $200 and $250 per hour denied; $150 awarded instead. No justification provided for requested fee, which is well beyond average hourly rate awarded in arbitrations arising in South Florida.

Villa 56 Condo. Assn., Inc. v. Gonzalez,
Case No. 98-3346 (La Plante / Final Order on Attorney's Fees / May 15, 1998)

- Two hours excessive for filing simple arbitration petition and letter to division, reduced to one hour. Two hours excessive for preparation of brief motion to tax costs and attorney's fees, reduced to one hour.

Excessive/Reasonable (continued)

Villa 56 Condo. Assn., Inc. v. Rivera,
Case No. 98-4043 (La Plante / Final Order on Attorney's Fees / June 12, 1998)

- Two hours found excessive to draft simple petition for arbitration, and two hours found excessive to file motion for attorney's fees, reduced to one hour each.

Villas on the Green Condo. Assn., Inc. v. Holleran,
Case No. 95-0130F (Richardson / Final Order on Motion for Attorney's Fees and Costs / June 27, 1995)

- Hourly rate of $175.00 per hour excessive considering simple issues presented.

Vivienda at Bradenton II Condo. Assn., Inc. v. Brittain, et al.,
Case No. 95-0417F (Scheuerman / Final Order / December 12, 1995)

- 17 hours for answer and counterclaim reduced to 8.5 hours. Unit billing of minimum .5 hour for each activity not reasonable.

Warren, et al. v. Springwood Village Condo. Assoc. of Longwood, Inc.,
Case No. 01-3785 (Scheuerman / Final Order on Motion for Attorney's Fees / February 20, 2002)

- Expenditure of 340 hours by Petitioner was not unreasonable in case where Respondent sought a rehearing on issues already ruled upon – ignored Arbitrator's recommendations to seek settlement and warnings about attorney's fees and went to hearing that lasted two and a half days.

West Shore Village Master Corp., Inc. v. Carroll, et al.,
Case No. 99-0588 (Cowal / Final Order on Attorney's Fees / April 30, 1999)

- Where association failed to timely indicate on the record that second dog had been sold making the matter moot, additional hours expended by association's counsel on case thereafter were not reasonable and were not compensated.

West Wind Estates Condo. Assn., Inc. v. Bousfiha, et al.,
Case No. 00-0682 (Scheuerman / Final Order on Motion for Attorney's Fees / May 17, 2000)

- Where counsel was paid by the association the hourly sum of $175, and did not supply any information showing years of experience, areas of expertise, or other circumstance that would substantiate this hourly sum, association awarded fees at $150 per hour, which is the sum most commonly awarded in these arbitration proceedings for document enforcement cases.

West Wind Estates Condo. Assn., Inc. v. Miller, et al.,
Case No. 98-3362 (La Plante / Final Order on Attorney's Fees / February 27, 1998)

- $200/hour fee which exceeds $150/hour rate customarily charged for similar services, excessive, reduced to $150/hour.

Excessive/Reasonable (continued)

Wolfenson v. Huntington Lakes Section Three Assn., Inc.,
Case No. 98-4078 (Draper / Final Order on Attorney's Fees / July 13, 1998)

- Time spent by respondent/association's attorney to obtain recorded copy of condominium documents would not be compensated. Association should have a set of recorded documents on hand; petitioner/unit owner, who filed copy of documents obtained from association, should not have to bear the cost of the association playing catch-up.

Generally

Arlen House East Condo. Assn., Inc. v. Olemberg,
Case No. 96-0321F (Draper / Final Order on Attorney's Fees and Costs / October 30, 1996)

- Where parties settled fees claim by stipulation, and amount agreed to was far below that requested in petition for fees, stipulation adopted as part of final order.

Aspenwood at Grenelefe Condo. Assn., Inc. v. Schifano,
Case No. 95-0119F (Richardson / Final Order on Attorney's Fees / September 18, 1995)

- Arbitrator without authority to award fees incurred in trial de novo, which ended in a voluntary dismissal, unless directed to make such an award by the trial judge. Similarly, time spent in circuit court before the main arbitration petition was filed is not recoverable in the arbitration proceeding.

Bayview Condo. Assn., Inc. v. Helmstetter, et al.,
Case No. 98-4354 (Scheuerman / Final Order on Request for Attorney's Fees / December 3, 1998)

- Where fee case found its origin in tenant eviction petition filed by the association prior to October 1, 1997, and where condominium was not located within the 4th DCA, arbitrator has jurisdiction over the tenant and the fee case as dispute involved the board's authority to require the owner to perform some action with reference to the unit, to wit: evict the tenant.

- Fees incurred in prior circuit court action and appeal were not incurred in the arbitration proceeding and are not therefore recoverable in the arbitration.

Bermuda Cays Condo. Assn., Inc. v. Baker,
Case No. 98-4377 (Powell / Final Order on Attorney's Fees / March 12, 1999)

- Unit owners denied recovery of fees for their own services and costs because they did not prevail, their request/motion for fees and costs was filed more than 45 days after the issuance of the final order in the underlying case, and the unit owners were not represented by an attorney.

Generally (continued)

Bielefeld v. Seaplace at Atlantic Beach Condo. Assn., Inc.,
Case No. 99-1565 (Powell / Final Order on Motion for Fees / April 28, 2000)

- Unit owner's defense that, where the underlying dispute was dismissed when the unit was sold and therefore the arbitrator lacked jurisdiction over the ensuing fees motion, was rejected. For purposes of determining jurisdiction over the fees motion, the status of the parties at the point when the dispute arose determines the applicability of the statute awarding fees.

- Where association prevailed on certain issues, but other issues had not been adjudicated at the point when the underlying case was dismissed, fees were awarded only for the time deemed attributable to the claims on which the association prevailed. Thus, $1,845 was awarded out of $3,765 sought.

Big Pass Assn., Inc. v. Aaron,
Case No. 95-0305F (Price / Final Order on Petition for Attorney's Fees and Costs / October 31, 1995)

- Attorney's fees not awarded for time spent in circuit court proceeding which preceded the arbitration, or for time spent in matters relating to both the arbitration and the circuit court proceeding.

Boettger v. Ocean Palms Condo. Assn., Inc.,
Case No. 93-0204F (Goin / Final Order Petitioner's Motion for Attorney's Fees / September 17, 1993)

- Where petitioning unit owners prevailed on three out of five significant issues raised in the petition for arbitration, fees of $5,580 awarded ($6,630 requested). Amount requested discounted where counsel for the petitioners did not submit detailed time records which reflect the amount of time spent on each specific claim.

Brickell Place Condo. Assn., Inc. v. Villamizar,
Case No. 94-0287F (Richardson / Final Order Dismissing Motion for Attorney's Fees / July 19, 1994)

- Where underlying arbitration became moot upon removal of balcony enclosure by unit owner, but where unit owner had not been served in underlying arbitration, arbitrator lacked jurisdiction over the unit owner in the underlying arbitration, and further was precluded from awarding attorney's fees against someone who had not been a party.

Byron Gardens Condo. Assn., Inc. v. Mysak,
Case No. 99-0830 (Cowal / Final Order on Attorney's Fees / August 31, 1999)

- Where arbitration process was lengthened by both parties' failure to advise arbitrator that unauthorized dog had been removed, but where prevailing association sought modest reimbursement for attorney's fees (3.4 hours at $185 per hour), requested fees were deemed reasonable and were granted.

Generally (continued)

Captain's Way at Admiral's Cove Condo. Assn., Inc. v. Herer,
Case No. 00-0477 (Pine / Final Order on Motion for Attorney's Fees and Costs / April 14, 2000)

- Time spent by association/petitioner's attorney in working out an amendment to the condominium documents, and in seeking unit owner approval of same, which amendment would have permitted patio enclosures such as respondent's, is compensable. Likewise, time spent in discussing, planning, and negotiating settlement options is compensable. To hold otherwise would penalize petitioner for attempting to resolve the dispute non-adversarially.

Continental Towers, Inc. v. Nassif,
Case No. 99-2414 (Draper / Amended Final Order on Attorney's Fees / February 15, 2000)

- Fees motion arose out of an underlying case in which the arbitrator held that unit owners, and not the association, were responsible for the cost of removing and replacing tile on unit balconies needing repair. Although the association prevailed in the underlying action, its motion for fees was barred under s. 718.112(2)(a)2., F.S., because the association failed to respond to the unit owners' inquiry, out of which the dispute arose.

Coral Sun Townhomes Condo. Assn., Inc. v. Schechterman, et al.,
Case No. 00-0619 (Pasley / Final Order on Attorney's Fees / April 20, 2000)

- When a petition for arbitration is dismissed after impasse at mediation, s. 718.1255(2)(h), F.S., appears to require a party seeking an award of attorney's fees and costs incurred in connection with the arbitration and mediation proceedings to seek such an award in any subsequent court proceeding.

Cypress Chase North Condo. #2 Assn., Inc. v. Urbano,
Case No. 00-0325 (Pine / Final Order on Motion for Attorney's Fees / March 14, 2000)

- Where complained-of dog is removed before respondent becomes a party to the arbitration proceeding, before respondent comes under the jurisdiction of this tribunal, the relief asked by the petitioner is not obtained during the pendency of the arbitration case; consequently, the petitioner is not entitled to prevailing party attorney's fees.

Davila v. International Park Condo. II Assn., Inc.,
Case No. 98-3693 (Draper / Final Order on Attorney's Fees / June 26, 1998)

- Fees request was deficient where it failed to adequately detail each activity, date provided and the time spent on each activity. Request listed activities and time spent over the entire case for that category of activity (e.g., client meetings -- 5 hrs, site inspections -- 3 hrs).

De Renzo v. Concord Village Condo. XII Assn., Inc.,
Case No. 98-3480 (Scheuerman / Final Order Denying Request for Attorney's Fees / April 16, 1998)

- Owner who had no representation in underlying proceeding not awarded attorney's fees for consultations with attorneys where such services were rendered prior to the drafting of the petition.

Generally (continued)

Dehne v. Ocean Club II Condo. Assn., Inc.,
Case No. 94-0080F (Scheuerman / Final Order / May 19, 1994)

- Fees of $2,985.00 awarded ($3,065.00 requested) where unit owners prevailed on three of four issues advanced.

Desy v. River Key Condo. Assn., Inc.,
Case No. 93-0082F (Price / Final Order on Motion for Attorney's Fees and Costs / May 20, 1993)

- Fees incurred prior to the drafting and filing of the petition are not recoverable in the arbitration proceeding.

Doral House Condo. No. 2 Assn., Inc. v. Vera,
Case No. 98-4568 (Draper / Final Order on Respondent's Motion for Expenses and Fees / August 18, 1998)

- Unit owner denied recovery of fees for her own services, lost opportunities and expenses. Unit owner who is not an attorney may not recover fees for her own services and lost opportunities.

Eastwood Shores Condo. No. 4 Assn., Inc. v. Schaeffer,
Case No. 94-0369F (Richardson / Order Awarding Partial Fees / September 20, 1994)

- 2.2 hours claim for work done prior to filing of petition disallowed.

Estes, et al. v. Lido of Pinellas Condo. Assn., Inc.,
Case No. 95-0421F (Draper / Final Order on Attorney's Fees / May 31, 1995)

- Paralegal services are compensable where services are provided under the supervision of a licensed attorney and are non-clerical, meaningful legal work such as conferences with clients to prepare prehearing stipulation, drafting stipulation, meeting with witnesses in preparation for hearing.

- Work performed, rather than paralegal's qualifications, is focus of inquiry.

- Duplication of services by attorney and paralegal will not be compensated.

- $35/hour for paralegal services deemed reasonable.

- Qualified representative's services, described as consultant services, not compensable.

Fairview of the California Club Condo. Assn., Inc. v. Rosenfeld,
Case No. 93-0040F (Player / Order on Petitioner's Motion for Attorney's Fees / March 22, 1993)

- Fees not awarded for time spent on association business related to the unit owner prior to preparation of petition for arbitration.

Generally (continued)

The Federation of Kings Point Condo., Inc. v. Unit Owners Voting for Recall,
Case No. 00-0600 (Draper / Final Order on Attorney's Fees / April 28, 2000)

- Sections 718.303 and 57.105, F.S., do not give a right of attorney's fees to the prevailing party in a recall arbitration proceeding. Section 57.105, F.S., applies to a "civil proceeding or action," which does not include an arbitration proceeding.

- Attorney's fees will not be awarded where arbitrator did not have jurisdiction over disagreement.

Fountainview Condo. Assn., Inc., No. 4 v. Ilinets,
Case No. 95-0230F (Richardson / Final Order on Attorney's Fees / August 28, 1995)

- Fees not awarded where association failed to plead amount of fees sought, hourly rate, and amount of costs, and failed to provide proof of costs, as required by administrative rules.

The Gables, et al. v. Bass, et al.,
Case No. 00-0610 (Scheuerman / Final Order on Request for Attorney's Fees / July 31, 2000)

- Fees incurred prior to the drafting and filing of the petition for arbitration are not incurred in the arbitration proceeding, and are not recoverable. Fees incurred in a collateral proceeding or related appeal are not recoverable. Fees incurred after entry of an order disqualifying counsel are not recoverable.

The Gardens at Pembroke Lakes Condo. Assoc., Inc. v. Clementi,
Case No. 01-2368 (Pine / Final Order on Motion for Attorney's Fees / March 21, 2001)

- An offer of judgment does not preclude an award of attorney's fees.

- Dismissal of the petition as moot, where respondents have furnished the relief requested in the petition, does not preclude an award to petitioner of prevailing party attorney fees.

The Gardens North Condo. Assn., Inc. v. Brown,
Case No. 95-0229F (Grubbs / Final Order on Fees / September 13, 1995)

- Fact that order allowing answer to request for attorney's fees was returned with notice "no forward order on file" did not affect proceedings. Respondents had a duty to advise arbitrator and opposing party of new address, and fact that they voluntarily chose not to do so would be treated the same as if they had simply failed to respond to the motion for fees.

Gesing v. Townhomes of Carrollwood Village Condo. Assn., Inc.,
Case No. 94-0181F (Scheuerman / Final Order / August 2, 1994)

- Where unit owner was successful in challenge to one nomination of two board members, and where unit owner prevailed upon one-half of the issues presented and obtained one half of the relief requested, one-half of reasonable attorney's fees awarded where approximately one half of the fees generated were incurred as to the presentation of issues regarding the ousted board member.

Generally (continued)

Glen Cove Apartments Condo. Assn., Inc. v. Weit,
Case No. 95-0489F (Scheuerman / Final Order Denying Motion For Attorney's Fees / January 17, 1997)

- Where no breakdown presented of time spent on each issue, fees request denied.

Grand Bay Condo. Assn., Inc. v. Monnie, et al.,
Case No. 96-0360 (Draper / Final Order of Dismissal / January 8, 1997)

- Petition dismissed and fees denied pursuant to Rule 61B-45.048(9), providing that no attorney's fees will be awarded where the respondent remedies the dispute prior to time required for filing answer, where tenants removed floating dock before answer due.

The Greens of Tampa, Inc. v. The Greens of Town and Country Condo. Assn., Inc.,
Case No. 94-0104F (Scheuerman / Final Order / April 20, 1994)

- Records submitted by association in connection with motion for attorney's fees were inadequate to permit a division of fees among the various issues upon which it prevailed, and association not awarded fees.

Gulf Breeze at Vanderbilt Condo., Inc. v. Mleczko,
Case No. 99-2289 (Scheuerman / Final Order on Request for Attorney's Fees / February 15, 2000)

- Costs and fees incurred prior to the drafting of the petition for arbitration are not considered to have been incurred "in the arbitration proceeding" and are not, therefore, awarded. This includes charges for computerized legal research performed prior to the drafting of the petition for arbitration.

Habitat II Condo. Assoc., Inc. v. Smith,
Case No. 00-1604 (Draper / Order on Motion for Reconsideration / January 11, 2001)

- Fees movant held to have adequately plead his request for attorney's fees by requesting, in a prayer for relief in a reply to the association's memorandum of law filed prior to entry of final order, that the arbitrator award his "costs and reasonable attorney's fees pursuant to the declaration." The failure to specifically plead entitlement to fees pursuant to s. 718.1255, F.S., was not fatal to the request. In arbitration proceedings pursuant to s. 718.1255, F.S., the question is not whether the request for fees cites a specific statutory basis, rather it is whether the request was made prior to entry of final order.

Harbour Lights, Inc. of Naples v. Smith, et al.,
Case No. 97-0121F (Scheuerman / Final Order on Motion for Attorney's Fees / July 10, 1997)

- Fees of $5,401.40 awarded to owner who successfully showed that illegal dog was removed prior to the time required for the filing of the answer.

Generally (continued)

Heatherwood Condo. Assn. of East Lake, Inc. v. Edwards,
Case No. 98-3318 (Anderson-Adams (Final Order on Motion for Attorney's Fees / June 2, 1998)

- Underlying case was initiated prior to October 1, 1997, so the provisions of Rule 61B-45-048 (8), F.A.C., apply. Where an Order Requiring Answer was never entered prior to the parties being ordered to participate in mediation, it would be impossible for the respondent unit owner to determine the time period in which she could comply with the association's demands and thus avoid being assessed attorney's fees under Rule 61B-45.048 (8), F.A.C. Likewise, it is now impossible for the arbitrator to determine whether respondent's remedial actions were timely under the same rule, and therefore the motion for attorney's fees and costs is denied.

Hunt v. Half Moon Bay by K. Hovnanian Condo. Assn., Inc.,
Case No. 96-0191F (Scheuerman / Final Order on Motion for Attorney's Fees / July 30, 1996)

- Fees awarded in arbitration would not include fees incurred in previous circuit court litigation.

- Where main issue in case was whether owner should be permitted to keep truck, it was not the intent of the rules to require a breakdown of all time spent by counsel on sub-issues such as estoppel or retroactive application of parking rules.

The Imperial at Brickell Condo. Assoc. Inc. v. Glottman, et al.,
Case No. 02-4984 (Pasley / Final Order Awarding Attorney's Fees and Costs / June 24, 2002)

- Where counsel has been practicing law for 20 years and has extensive experience in the area of condominium law, the hourly rate of $225 does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience.

International Village Assn., Inc. v. Marropodi,
Case No. 97-0321F (Goin / Final Order on Petitioner's Motion for Prevailing Party Attorney Fees / July 18, 1997)

- Association awarded fees where unit owners did not file an answer to the petition and a final order on default was entered against them. Although unit owners filed a response to the motion for fees which denied the allegations and raised some defenses, the information should have been filed after the petition was served on them.

Ironwood Villas Condo. Assn., Inc. v. U.S. Cable, Inc.,
Case No. 97-0425F (Draper / Order / October 1, 1997)

- Attorney billing records would be sealed pending abeyance of fees petition during trail de novo because they reflected confidential attorney-client communications and attorney work product.

Generally (continued)

Karanda Village V Condo. Assn., Inc. v. Kolman,
Case No. 98-3620 (Oglo / Notice of Communication and Final Order on Motion Seeking Award of Attorney's Fees / March 30, 1998)

- Fees petition of former qualified representative stricken. Petition for attorney's fees must be filed by a party through its attorney or qualified representative.

Karanda Village III Condo. Assoc., Inc. v. Cannizzaro,
Case No. 00-0781 (Draper / Final Order on Attorney's Fees / June 15, 2000)

- Association would not be awarded fees for time its attorney spent responding to FCHR in the matter of the unit owner's fair housing claim. Arbitration was abated during pendency of FCHR investigation; fee for FCHR representation were not incurred "in the arbitration proceeding"

Kelly Greens Single Family Condo III Assn., Inc. v. Mogavero,
Case No. 94-0477F (Price / Final Order on Motion for Attorney's Fees and Costs / March 14, 1995)

- The mere fact that other petitions are filed by an association against other unit owners on the same issue does not, in and of itself, justify a reduction in the attorney's fees requested, but may be considered in determining whether the time requested for preparation of the petition was reasonable.

Kendall Lakes East Lakeview Townhome Condo. Assn., Inc. v. Pelaez,
Case No. 99-1178 (Pine / Final Order on Attorney's Fees / October 27, 1999)

- Attorney's fees may be awarded for litigating the issue of entitlement to fees, but not for time spent litigating the amount of fees.

- Two hours awarded as a reasonable amount of time to wind up the case, once merits became moot, and to draft and file the motion for attorney's fees.

- Because documents supporting fee request were inconsistent, plainly inaccurate, and nearly unreadable, arbitrator was forced to reconstruct time spent on this case prior to the date the merits became moot.

Klaber, et al. v. Avant Garde Condo. Assn., Inc.,
Case No. 97-2564 (Scheuerman / Final Order Dismissing Motion for Attorney's Fees / June 12, 1998)

- Where arbitrator lacked jurisdiction over dispute seeking to challenge special assessment, arbitrator also lacked authority to award prevailing party costs and attorney's fees.

Generally (continued)

Lakeside Point Apartment No. 5 Assn., Inc. v. Hanner,
Case No. 98-3557 (Anderson-Adams / Amended Final Order on Attorney's Fees / May 22, 1998)

- Underlying case was initiated prior to October 1, 1997, so the provisions of Rule 61B-45-048 (8), F.A.C., apply. Where an Order Requiring Answer was never entered prior to the parties being ordered to participate in mediation, it would be impossible for the respondent unit owner to determine the time period in which she could comply with the association's demands and thus avoid being assessed attorney's fees under Rule 61B-45.048 (8), F.A.C. Likewise, it is now impossible for the arbitrator to determine whether respondent's remedial actions were timely under the same rule, and therefore the motion for attorney's fees and costs is denied.

Las Casas Owners Assn., Inc. v. Group of Members of Condo. Corp. who Executed Written Agreement to Recall Members of Board,
Case No. 95-0466F (Scheuerman / Final Order on Motion for Attorney's Fees / March 13, 1996)

- Counsel for the owners voting in favor of recall, who at the time was also a director not subject to recall, and who was also an owner who voted for the recall, should have resigned from the board to accept the representation in order to avoid the appearance of impropriety. Board member/attorney for the owners also participated in board vote on whether to accept recall petition. Fee request denied; attorney disqualified.

Leisure Living Estate Condo. Assn., Inc. v. Greive,
Grieve v. Leisure Living Estate Condo. Assn., Inc.,
Case No. 98-4492 (Anderson-Adams / Final Order on Attorney's Fees / March 3, 1999)

- Association awarded ½ of fees requested, where two underlying cases were consolidated, one of which was filed before Oct. 1, 1997 (so award of fees was discretionary), and the other was filed after Oct. 1, 1997 (mandatory award of fees); the association's attorney stated that it was impossible to break down the number of hours expended on each individual case; and each party prevailed on several issues.

Leisure Living Estates Condo. Assn., Inc. v. Sippell,
Case No. 93-0355F (Player / Final Order on Attorney's Fees / January 26, 1994)

- No time awarded for fees spent in circuit court litigation preceding arbitration.

Lessne v. Family Townhouses of the Lakes of Emerald Hills, Inc.,
Case No. 93-0247F (Goin / Final Order on Petitioners' and Respondents' Motion for Attorney's Fees / November 24, 1993)

- In a multi-count petition, where the multiple claims were unrelated to one another, unrelated claims should be treated for purposes of an award of attorney's fees as if they had been raised in a separate lawsuit, and no fee may be awarded for services on the unsuccessful claims. In this case, petitioners prevailed on two of eight counts; neither party prevailed on five counts, and the association prevailed on one count. Accordingly, the unit owners could only recover for fees related to two counts, and the association could only recover fees for services related to one count.

Generally (continued)

Lessne v. Family Townhouses of the Lakes of Emerald Hills, Inc., (continued)
Case No. 93-0247F (Goin / Final Order on Petitioners' and Respondents' Motion for Attorney's Fees / November 24, 1993)

- No fees awarded to prevailing unit owners where insufficient documentation for a determination of reasonable attorney's fees was given. Also, where association, as to one successful count, failed to submit detailed time records which reflect the amount of time spent on each particular claim, it was impossible to determine a reasonable attorney's fee, and no fee was awarded.

Lockner v. Waterway Townhouse Condo. Assn., Inc.,
Case No. 94-0105F (Draper / Order Denying Unit Owner's Request for Reimbursement of Pro-rata Share of Assessed Attorney's Fees and Costs / May 2, 1994)

- While reimbursement of assessment provision in s. 718.303, F.S., does not apply to s. 718.1255, F.S., arbitrations, arbitrator had the broad authority under s. 718.1255, F.S., to award such reimbursement as part of the remedy in an arbitration action. However, in order for such relief to be granted, it would have to be requested in the petition, which it was not in this case.

Loveland, et al. v. Harbor Towers and Marina Condo. Assn., Inc.,
Case No. 00-0067 (Scheuerman / Final Order on Requests for Attorney's Fees / March 23, 2000)

- Fees incurred "in the arbitration proceeding," with reference to a prevailing petitioner, refers to fees incurred beginning with the drafting of the petition. Where, on the other hand, a respondent prevails, recoverable fees are fees commencing with the preparation of the answer.

MacMillan v. Greenway Village South Management, Inc.,
Case No. 01-3370 (Scheuerman / Second Amended Final Order on Motion for Attorney’s Fees / February 28, 2002)

- After the time permitted for the filing of a motion for rehearing of the final order on motion for attorney's fees has expired, obvious errors in the final order may be corrected by the arbitrator on the court's own motion, but portions of the final order not shown to be clearly erroneous should be left in tact.

Malone v. Pebble Springs Condo. Assoc., Inc.,
Case No. 00-1934 (Pine / Final Order on Motion for Costs / March 13, 2001)

- Services performed by a non-attorney consultant who files documents on a party's behalf are not compensable.

- Paralegal services may be compensable where the services sought to be compensated are non-clerical, meaningful legal services, but party seeking compensation must describe actual actions taken that a clerical function from work requiring the expertise of a paralegal.

Generally (continued)

Marine Colony Condo. Assn., Inc. v. Eggleston,
Case No. 94-0277F (Scheuerman / Final Order / September 1, 1994)

- Fees of $250.00 awarded to association ($500.00 requested) where unit owner removed truck during the pendency of the arbitration but where unit owner failed to respond to the motion for attorney's fees thereby failing to enlighten the arbitrator on why fees should not be awarded.

Martinez, et al. v. The Village Condo. Assoc., Inc.,
Case No. 01-2471 (Scheuerman / Final Order Denying Motion for Attorney's Fees / May 4, 2001)

- Where owners/petitioners sought to challenge election shortly prior to the notice and conduct of the next annual election that would moot out election challenge, and where arbitrator accordingly dismissed the underlying case on grounds of mootness, there was no prevailing party. The petitioners obtained none of the relief sought and mootness of the dispute was unrelated to any action taken by the party.

McKenna v. Hammock Pine Village II Assn., Inc.,
Case No. 98-4597 (Pine / Final Order on Motion for Attorney's Fees and Costs /September 30, 1998)

- Where petition is dismissed for lack of jurisdiction, arbitrator has no jurisdiction to award fees.

McKenna v. Hammock Pine Village II Assn., Inc.,
Case No. 99-0586 (Anderson-Adams / Final Order on Attorney's Fees / July 9, 1999)

- The fact that unit owner had a contingency fee agreement with his attorney did not bar an award of prevailing party attorney's fees.

Morton Village Condo. Assn., Inc. v. Lucas,
Case No. 99-1270 (Anderson-Adams / Final Order on Attorney's Fees / July 27, 1999)

- Fees and costs associated with a circuit court case that was stayed to permit the parties to arbitrate not awarded because they were not incurred in the arbitration proceeding.

Nargi v. Ocean Harbor Condo. Assn., et al.,
Case No. 99-1133 (Draper / Amended Final Order on Attorney's Fees / November 8, 1999)

- Final Order would be reissued in order to re-open the 30-day period afforded the parties to file a petition for trial de novo. One party alleged that the copy of the final order issued and mailed on September 30 was not received by the party until November 1.

Nassif v. Continental Towers, Inc.,
Case Nos. 99-0488 (Draper / Final Order Dismissing Motion for Fees and Costs / March 16, 1999)

- Motion for attorney's fees filed prematurely, following entry of partial summary final order. Fees motion is to be filed after entry of a final order in a case.

Generally (continued)

North Oaks Condo. Assn., Inc. v. Grant, et al.,
Case No. 00-0012 (Pine / Partial Final Order / January 31, 2000)

- A simple statement that the respondent, an attorney, had spent eight hours defending against the petition is insufficient to support an award of fees for this amount of time. See Rule 61B-45.048(2)(c), F.A.C.

Oceanside Terrace Condo. Assn., Inc. v. Greenlee,
Case No. 00-0596 (Scheuerman / Partial Summary Final Order / July 3, 2000)

- Arbitrator accepted jurisdiction over fees petition where underlying case was resolved through settlement agreement providing that if a party failed to timely perform pursuant to the agreement, the other party would be entitled to recover its reasonable costs and attorney's fees incurred in the proceeding. Although enforcement of a settlement agreement would generally lie in the courts, where the arbitrator had the authority in the first instance to fix, determine, and award fees, arbitrator could properly re-examine the issue of fees in this context.

- Where settlement agreement provided for association to remove certain bushes, and for the owner to repair fence by a date certain, association after an evidentiary hearing found to be 50% responsible for the untimely performance of the owner in repairing the fence, where the association's agents pressure-cleaned the sidewalk adjacent to the fence, causing dirt to become embedded in the fence, necessitating time consuming cleaning procedure for the fence. Pursuant to the settlement agreement providing that a party's untimely performance shall make the party responsible for the other party's costs and attorney's fees, association awarded 50% of its costs and fees.

Oross, et al. v. Boca Linda North Condo, Assn., Inc.,
Case No. 98-5403 (Draper / Final Order on Attorney's Fees / February 23, 1999)

- Time spent by unidentified individual, who did not submit affidavit as to whether they were an attorney (and stating the number of years in which the attorney has been practicing law) or legal assistant, would not be compensated.

Park East Home Owners Assn., Inc. v. Neu,
Case No. 94-0400F (Goin / Final Order on Petitioner's Motion for Attorney's Fees and Costs / November 29, 1994)

- Fees awarded to attorney and his paralegal where unit owner defaulted.

Park Place Condo. Assn., Inc. v. Hakki, et al.,
Case No. 95-0334F (Draper / Final Order on Attorney's Fees / March 13, 1996)

- Non-attorney unit owners may not recover attorney's fees for their own services.

Generally (continued)

Pine Ridge at Haverhill Condo. Assn., Inc. v. Zimmer,
Case No. 93-0147 (Price / Order on Prehearing Conference / September 10, 1993)

- Prior to rendition of final order in main arbitration proceeding, there is no prevailing party and there is no liability on the part of a party for costs and attorney's fees of the opposing party. Any demand therefore is not appropriate at that time. Association ordered to cease any and all efforts to collect any legal fees from the unit owner in any way connected with the arbitration.

The Pinebark Condo. No. 3., Inc. v. Salabarria, et al.,
Case No. 99-2299 (Pasley / Final Order on Attorney's Fees / March 27, 2000)

- An entry labeled "work in progress" does not meet the requirement outlined in Rule 61B-45.048(2)(c)2., F.A.C., because it does not indicate the activity for which compensation is sought, and is not recoverable.

Powers v. Voyager Condo. Assn., Inc.,
Case No. 94-0033F (Player / Order on Petitioners' Motion for Attorney's Fees / March 16, 1994)

- Fees of $1,228.00, as requested, awarded to prevailing unit owners where although request for fees was not made in the original petition, it was made in an amendment to the petition which provided, on its face, that a copy had been sent to the association.

Raska v. The Fountains of Ponte Vedra, Inc.,
Case No. 95-0155F (Goin / Final Order on Petitioner's and Respondent's Motions for Attorney's Fees and Costs / November 13, 1995)

- Petitioner unit owner denied attorney's fees where petitioner consulted briefly with an attorney but where attorney never filed a notice of appearance or filed anything on behalf of petitioner.

Ray v. Center Court Condo. Assn., Inc.,
Case No. 95-0177F (Goin / Final Order on Petitioner's and Respondent's Motions for Attorney's Fees and Costs / October 4, 1995)

- No attorney’s fees awarded where association failed to respond to complaints filed by unit owners pursuant to s. 718.112(2)(a)2., F.S.

Rittlinger v. Martinique 2 Owners’ Assn., Inc.,
Case No. 99-0514 (Powell / Order on Respondent’s Request / June 25, 1999)

- Association requested that, since unit owner’s complaint for trial de novo related to only one issue in underlying dispute, the fee proceeding, which had been stayed, should go forward on the other issue. The request to sever was denied by the arbitrator as impracticable and potentially wasteful, since it would very possibly result in two proceedings.

Generally (continued)

Riverwood Condo. Assoc., Inc. v. Schwartz,
Case No. 01-2706 (Pine / Order Denying Motion for Attorney's Fees / April 11, 2001)

- When a petition for arbitration is dismissed after impasse at mediation, the statute appears to require a party seeking an award of attorney's fees incurred in connection with the arbitration and the mediation to seek such an award in court. s. 718.1255(4)(h), F.S. (2000).

Rodman v. Ocean Village Property Owners' Assn., Inc.,
Case No. 94-0010 (Player / Order Dismissing Respondent's Motion to Determine Prevailing Party / May 6, 1994)

- Where final order in main arbitration had been issued determining that respondent association was not a condominium association under Chapter 718, F.S., and where petition was accordingly dismissed, arbitrator did not have jurisdiction to make prevailing party and attorney's fees determination.

Rose v. The Village of Kings Creek Condo. Assoc., Inc., and Buttari,
Case No. 01-2661 (Draper / Final Order on Attorney's Fees / June 6, 2001)

- Prevailing unit owner who is an attorney and represents himself will be awarded fees.

Royal Park Condo. Apartments, Inc. v. Lynn,
Case No. 01-2516 (Scheuerman / Final Order on Motion for Attorney's Fees / December 18, 2001)

- Time spent in companion circuit court case not recoverable in arbitration proceeding.

San Marino Bay Condo. 4 Assn., Inc. v. Mendez, et al.,
Case No. 99-1029 (Cowal / Order Dismissing Motion for Attorney's Fees / May 20, 1999)

- Where underlying arbitration case was administratively closed due to respondent/tenant's invoking automatic stay of bankruptcy prior to hearing, no prevailing party was ascertained; consequently, no attorney's fees can be awarded to association.

Sea Island Apartments Condo. II v. Walz,
Case No. 98-5294 (Pine / Summary Final Order on Motion for Attorney's Fees / December 3, 1998)

- Where neither respondent was served with the petition for arbitration, arbitrator unable to order them to pay association's attorney fees.

Seascape Club Condo. Assn., Inc. v. Frankel, et al.,
Case No. 99-0597 (Scheuerman / Final Order on Motion for Attorney's Fees / April 20, 1999)

- Fees not awarded for activities undertaken prior to the drafting and filing of the petition for arbitration.

Generally (continued)

Shore Haven Condo. Assn. v. Drake,
Case No. 93-0043F (Price / Final Order on Motions for Attorney's Fees / April 30, 1993)

- Unit owners' request that they be reimbursed for their share of assessments levied by the association to fund the association expenses of the arbitration, was denied. Fact that unit owners were the prevailing parties is not sufficient in and of itself to exempt them from the payment of common expenses in the manner provided in the declaration.

Sievers v. Ancient Oaks R.V. Resort Condo. Assn., Inc.,
Case No. 97-2386 (Draper / Final Order on Attorney's Fees / March 11, 1998)

- Argument that fees may not be awarded unless losing party files a complaint for trial de novo rejected. Fees may be awarded regardless of whether the losing party files for a trial de novo. Statute 718.1255(4)(c), F.S. (1995).

Smith v. Ocean Villas Condo. Assoc., Inc.,
Case No. 00-0711 (Draper / Final Order Denying Motion for Attorney's Fees / August 30, 2000)

- Motion for attorney's fees that was filed more than 6 months after final order was rendered was denied as untimely. Regardless of the movant's assertion that the motion was mailed and should have been timely received by the Arbitration Section, the motion could not be considered as it was filed outside the 45-day period prescribed by Rule 61B-45.048, Florida Administrative Code.

Son v. The Gardens of Key Biscayne-Alhambra Condo. Assn., Inc.,
Case No. 95-0281F (Goin / Final Order on Respondent's Petition for Award of Attorney's Fees / September 15, 1996)

- Attorney's fees not awarded to association where petition was dismissed for lack of jurisdiction, there was no ruling on the merits and because of presumption against awarding fees against unit owners.

South Gate Village Green Condo. Section One Assn., Inc. v. Marquis,
Case No. 94-0276F (Goin / Final Order on Respondents' Motion for Costs / November 22, 1994)

- Request for award of fees for time spent by pro se unit owner not awarded; s. 718.1255, F.S., contemplates award of attorney's fees, not an award of fees for qualified representatives. Also, request that they be reimbursed for their portion of special assessment to fund association's expenses denied because s. 718.303, F.S., does not apply to arbitration but to circuit court litigation and because unit owners did not ask for it prior to the rendition of the final order.

South Pointe Villas Condo. Phase IV Assn., Inc. v. Lowry,
Case No. 95-0121F (Grubbs / Final Order on Attorney's Fees / January 29, 1996)

- Where there is no indication in the motion for fees or affidavit who has billed certain hours, and the bill indicates that services were performed by person with initials different from the attorney of record, the time spent by the unknown person will not be reimbursed.

Generally (continued)

Spanish Trace Condo. Assn., Inc. v. Ruis,
Case No. 99-1368 (Pine / Final Order on Attorney's Fees / September 3, 1999)

- Prayer to have each party bear own fees/costs was denied. Parties were advised at inception of underlying arbitration proceeding that prevailing party's reasonable fees and costs would be borne by other party.

Stein v. Water Glades Property Owners' Assn.,
Case No. 93-0404 (Richardson / Order Dismissing Motion for Attorney's Fees / May 5, 1994)

- Where petition filed by unit owners involved the association's alleged failure to maintain the common elements, which was within the board's business judgment, the underlying arbitration was dismissed for lack of jurisdiction, and similarly the motion for recovery of fees was also one outside of the jurisdiction of the arbitrator.

Suncrest Townhouse Condo., Inc. v. Bottorff,
Case No. 92-0177 (Player / Final Order on Petitioner's Motion for Award of Attorney's Fees / March 25, 1993)

- Case law construing Ch. 682, F.S., as not permitting arbitrator to award fees, is not applicable in attorney's fees determinations under s. 718.1255, F.S.

- Attorney's fees may be awarded for time spent in establishing entitlement to and collection of attorney's fees.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,
Case No. 97-0440F (Scheuerman / Final Order on Motion for Attorney's Fees / December 31, 1997)

- Where petition of resident/non-unit owner dismissed for lack of standing as resident and for lack of jurisdiction over petition filed by non-owner, there was no prevailing party, and no jurisdiction to assess fees; thus, association not awarded its fees.

The Trails at Royal Palm Beach, Inc. v. Wargovich,
Case No. 95-0261F (Goin / Final Order on Petitioner's Motion for Attorney's Fees and Costs / December 11, 1995)

- Where multiple claims involve a common core of facts, based upon related legal theories, and are so intertwined as to make it difficult to apportion the time spent one individual issue, it is appropriate to award recovery of all fees expended on the related issues.

Village on the Green Condo. II Assn., Inc. v. Knaus,
Case No. 95-0228F (Richardson / Final Order on Attorney's Fees / September 7, 1995)

- A motion for rehearing suspends the time required for the filing of a petition for attorney's fees. Until there is an order on the motion for rehearing, a determination as to who prevailed has not yet been rendered. The time for the filing of a petition for fees does not commence to run until an order on the timely filed motion for rehearing is issued.

Generally (continued)

Village on the Green Condo. II Assn., Inc. v. Knaus, (continued)
Case No. 95-0228F (Richardson / Final Order on Attorney's Fees / September 7, 1995)

- Where a petition for fees is filed involving a case with multiple claims, the unrelated claims are treated as though they had been raised in separate lawsuits with no award made for the unsuccessful claims.

West Bay Plaza Condo. v. Weiss,
Case No. 99-2149 (Scheuerman / Final Order on Request for Costs / December 13, 1999)

- Prevailing owner's request to be excused from her share of assessment to pay for the association's attorney was denied. Remedy provided by s. 718.303, F.S., is applicable only to court actions and not to arbitration proceedings, and where statute provided for mandatory award of fees and costs and eliminated discretion with the arbitrator, requested relief could not be granted.

Woodscape Townhomes Condo. Assn., Inc. v. Wahler,
Case No. 94-0108F (Player / Final Order / June 2, 1994)

- Where attorney time records failed to provide a clear description of each task performed and the time spent on each activity, but instead merely indicated the total amount of hours spent each day on the case and did not show specific activity, requested fees denied and only time spent preparing motion for attorney's fees awarded.

Prevailing Party

Anderson v. Five Towns of St. Petersburg, No. 305, Inc.,
Case No. 95-0302F (Draper / Final Order on Attorney's Fees / January 4, 1996)

- Unit owner who obtained final order finding that change to carports was a material alteration of the common elements requiring unit owner approval was a prevailing party; the fact that association thereafter obtained the required unit owner approval, an option given in the order, in no way renders the unit owner the non-prevailing party. Similarly, association is not the prevailing party.

Barenscheer, et al. v. Marina Tower Condo. Assn., Inc.,
Case No. 99-0559 (Scheuerman / Final Order on Motion for Attorney's Fees / April 26, 1999)

- Although association, during pendency of arbitration proceeding, sought and obtained membership vote to approve installation of a cellular telephone tower that had earlier been installed, action of association in providing part of relief requested by petitioning unit owners would only confer prevailing party status on owner/petitioners if such action was required by law.

- Where association, in response to petition alleging the association had altered the common elements without a vote of the owners, secured membership vote approving earlier installation of cellular communications towers on top of the condominium building, such remedial action was required by law and owners challenging installation of the tower were the prevailing parties.

Prevailing Party (continued)

Barrera, individually and Bleau Fontaine Condo. Number Two, Inc. v. Bleau Fontaine Community Assoc., Inc.,
Case No. 01-2223 (Draper / Final Order on Attorney's Fees / January 26, 2001)

- Where community association agreed to put certain individuals on the board of directors, as requested in petition, petitioners determined to be the prevailing party.

Bay Harbor Condo. Assoc., Inc. v. Innocenti,
Case No. 01-3830 (Scheuerman / Final Order on Motion for Attorney's Fees / December 12, 2001)

- Where unit owner/petitioner dismissed petition for reasons unrelated to the merits of the petition and where record complete with disputed facts would not permit determination to be made on the merits of the dispute, arbitrator ruled that there was no prevailing party and denied the Association's motion for cost and fees.

Belle Plaza Condo. Assn., Inc. v. Gaviria,
Case No. 99-0074 (Draper / Final Order on Costs and Attorney's Fees / March 18, 1999)

- Association was prevailing party where unit owner removed contested hook from common element balcony wall after petition filed and did not contest association's assertion in fees motion that the petition was the motivating factor in removal of the hook.

Bermuda Cays Condo. Assn., Inc. v. Baker,
Case No. 98-4377 (Powell / Final Order on Attorney's Fees / March 12, 1999)

- Although the dispute was rendered moot when the unit owners removed the Plexiglas lanai enclosure, the association was the prevailing party where the arbitrator concluded, based upon the timing of events, that the unit owners' action was due to the filing of the petition.

Bielefeld v. Seaplace at Atlantic Beach Condo. Assn., Inc.,
Case No. 99-1565 (Powell / Final Order on Motion for Fees / April 28, 2000)

- Where association prevailed on certain issues, but other issues had not been adjudicated at the point when the underlying case was dismissed, fees were awarded only for the time deemed attributable to the claims on which the association prevailed. Thus, $1,845 was awarded out of $3,765 sought.

Boca Terrace Condo. Assn., Inc. v. Grecco,
Case No. 98-4374 (Draper / Final Order on Attorney's Fees / September 14, 1998)

- Association determined to be the prevailing party for the purpose of fee award where unit owner removed van which was alleged to be parked in violation of the documents, thus mooting the case. Van was removed after unit owner received petition. While it was arguable that van did not contravene rule against vehicles with commercial lettering and/exterior storage areas, it was not registered with the association as required and so removal was required by the documents. Therefore, the association prevailed.

Prevailing Party (continued)

Boettger v. Ocean Palms Condo. Assn., Inc.,
Case No. 93-0204F (Goin / Final Order Petitioner's Motion for Attorney's Fees / September 17, 1993)

- Unit owners prevailed where petition for arbitration alleged an illegal election and requested that a new election be conducted. Arbitrator declared election null and void but did not require that a new election be held because of previously scheduled new election.

- Unit owners determined to be prevailing party, where, although the arbitrator did not invalidate board rule requiring all unit owners to rent through the association's rental agent, the arbitrator declared that the association could not enforce the rule because the rental agent it had hired was not properly licensed under Chapter 475.

Brown-Myrtil v. Oakland Forest Club Condo. Assoc., Inc.
Case No. 00-1834 (Pasley / Final Order on Attorney's Fees and Costs / November 30, 2000)

- The petitioner is the prevailing party where she succeeded on a significant issue and achieved some of the benefit sought, even though her request for damages was denied.

Calusa Club Village Condo. Building E Assn., Inc. v. Civil, et al.,
Case No. 94-0476F (Richardson / Final Order on Motion for Attorney's Fees / January 13, 1995)

- Even though the dispute was rendered moot when tenants vacated unit, association was prevailing party because it obtained the relief it sought, because the presumption that the petition was the motivating factor was not successfully rebutted by respondents, and because the eviction of the tenants was required by law, the respondents having failed to assert a legally sustainable defense.

Castle Council, Inc. v. Cloetingh,
Case No. 96-0409F (Draper / Final Order on Attorney's Fees / January 15, 1997)

- Association not prevailing party in case dismissed as moot where unit owner supplied association a key to his unit at arbitrator's request after he asserted that he had already provided a key and where removal of washer/dryer from unit was not required by law. Documents prohibited installation of washer/dryer, however, in that unit owner claimed washer/dryer was not installed, just stored, and association admitted it did not know for sure whether washer/dryer was installed, removal was not required.

Chateaux du Lac Condo. Assoc. Inc. v. Yarbrough, et al.,
Case No. 02-5076 (Scheuerman / Final Order on Request for Attorney's Fees / July 1, 2002)

- Where owner waited until the commencement of the arbitration proceeding by the association to assert her disabled status and her need for an accommodation to keep her washer and dryer, and where it was likely that if this claim had been presented before litigation, the association would have permitted her to keep the laundry facilities, neither party prevailed where arbitration final order permitted her to keep the facilities subject to the limitation that only she could use them.

Prevailing Party (continued)

Chevy Chase Condo. Assoc., Inc. v. Achaibar,
Case No. 00-1525 (Pine / Final Order of Motion for Attorney's Fees / October 13, 2000)

- Where it cannot be ascertained whether relief was provided before or after filing date of petition, but it is agreed that relief was provided before respondent had actual notice of the filing, and where the pleadings do not reflect a causal relationship between the filing of the petition and the removal of the satellite dish complained of, petitioner is not a prevailing party.

Costa Del Sol Condo. Assn., Inc. v. Thomas,
Case No. 97-2050 (Oglo / Final Order on Motions for Award of Attorney's Fees / March 24, 1998)

- No fees awarded to unit owners where association's petition was dismissed for mootness because unit owners had unauthorized dog euthanized. Arbitrator rejected argument that association permitted case to be dismissed by not responding to order to show cause why case was not moot, which is tantamount to a voluntary dismissal.

Crossfox Condo. Assn., Inc. v. Dyer,
Case No. 93-0382F (Player / Final Order / March 2, 1994)

- Where unit owner provided duplicate key to association manager prior to receiving petition for arbitration, petition could not have been the motivating factor behind relinquishment of key, and the association cannot be characterized as a prevailing party, even where final order in main arbitration proceeding required the unit owner to comply with the key rule in the future.

Cypress Chase North Condo. #2 Assn., Inc. v. Urbano,
Case No. 00-0325 (Pine / Final Order on Motion for Attorney's Fees / March 14, 2000)

- Where complained-of dog is removed before respondent becomes a party to the arbitration proceeding, before respondent comes under the jurisdiction of this tribunal, the relief asked by the petitioner is not obtained during the pendency of the arbitration case; consequently, the petitioner is not entitled to prevailing party attorney's fees.

Cypress Woods, Inc. v. Robineau, et al.,
Case No. 95-0090F (Draper / Final Order on Petitioner's Motion for Award of Attorney's Fees / May 12, 1995)

- Association determined to be prevailing party where injunctive-type relief ordered against unit owner; even though tenants vacated unit shortly before final hearing, petition considered motivating factor for their action.

Cypress Woods, Inc. v. Rosen,
Case No. 02-4886 (Gioia / Final Order Awarding Attorney's Fees and Costs and Denying Petitioner's Motion for Default / July 23, 2002)

- Where the underlying case, filed by the association seeking removal of a tenant's dog, was dismissed for failure by the association to deliver pre-arbitration demand letter to the tenant, the association was not the prevailing party, and the owner was instead awarded costs and attorney's fees as the prevailing party who succeeded in obtaining a dismissal of the case.

Prevailing Party (continued)

Dadeland Park Condo. Assn., Inc. v. Burey-Jacas,
Case No. 99-1927 (Powell / Final Order on Motion for Fees / February 28, 2000)

- Association's motion for fees alleged that corrective action was taken by unit owner after the petition was filed; the unit owner's response to motion did not rebut the association's assertion. Where the presumption that the petition was the catalyst prompting the action which resolved the dispute was not rebutted, the association was deemed to be the prevailing party.

Desy v. River Key Condo. Assn., Inc.,
Case No. 93-0082F (Price / Final Order on Motion for Attorney's Fees and Costs / May 20, 1993)

- Fact that parties entered into a settlement stipulation does not preclude a finding that one party was the prevailing party.

Eastfield Slopes Condo. Assn., Inc. v. Tolliver, et al.,
Case No. 98-5475 (Pine / Final Order on Attorney's Fees / January 28, 1999)

- Where respondents raised no defense and refused to file any pleading as ordered by arbitrator, but voluntarily vacated condominium unit, association is the prevailing party and entitled to its reasonable fees and costs.

Ehrlich, Jr. v. Euclid East Condo., Inc.,
Case No. 96-0397F (Goin / Final Order On Motions For Attorney's Fees / November 18, 1996)

- Unit owner who lost on motion for temporary injunction, which sought to enjoin association from replacing the jalousie windows, was not the prevailing party. Unit owner failed to amend petition for arbitration to request other relief and dispute became moot once windows were replaced because jalousie windows no longer available. Association considered to be prevailing party.

Eldorado Towers Condo. Assn., Inc. v. Zambrano, et al.,
Case No. 97-0255 (Draper / Final Order on Attorney's Fees / November 11, 1997)

- Arbitrator was without jurisdiction to award fees to association where unit owner was not actually served with petition and order requiring answer prior to time nuisance tenant removed himself from unit. For this reason, even though unit owner had been provided a courtesy copy of petition by association with its demand letter, prior to petition being filed, arbitration action was not the catalyst motivating the respondents' action.

Emerald Seas Condo. Assn., Inc. v. Harvan, et al., and Spangler, et al. v. Emerald Seas Condo. Assn.,
Case Nos. 97-0431F and 97-0431F (Consolidated) (Draper / Final Order on Attorney's Fees / December 18, 1997)

- Association was prevailing party in action to require unit owner to provide unit key where unit owner provided key several months following filing of petition.

Prevailing Party (continued)

Ettinger v. Corniche Condo. Apt. Assn. of the Palm Beach, Inc.,
Case No. 92-0174 (Grubbs / Order Denying Motion for Attorney's Fees / January 4, 1993)

- Association is not prevailing party where compromise reached permitted unit owner to view non-privileged portion of letter from attorney to association.

Fairway Park Condo. Assn., Inc. v. Dilloff,
Case No. 97-0267F (Draper / Final Order on Attorney's Fees / August 6 1997)

- Where petition was dismissed because claim was pending before federal fair housing agency, respondent unit owners were not prevailing party. No determination was made on any significant issue.

First Encounter Condo. Assn., Inc. v. Lax,
Case No. 92-0190 (Player / Final Order Dismissing Petition on the Merits / December 1, 1992)

- Association prevailed where nuisance tenant vacated unit in accordance with relief requested by association in petition.

Five Towns of St. Petersburg No. 300, Inc. v. Nicolov,
Case No. 00-0994 (Powell / Final Order on Motion for Attorney's Fees / November 6, 2000)

- Where dog was removed before the unit owner received the petition, the relief sought by the association was not obtained as a result of the petition or during the pendency of the arbitration case; consequently, the association was not deemed the prevailing party and was not entitled to an award of fees.

Frasca v. Sabal Palm Condo. of Pine Island Ridge,
Case No. 98-4876 (Powell / Final Order on Attorney's Fees / January 28, 1999)

- Where prevailing unit owner sought fees, association claimed that fees should be set off by fees and costs of association, because it had prevailed on certain issues. The arbitrator rejected the association's claim because the association did not prevail on any significant issue in the underlying action. The association's contention that it prevailed on the issue of the selection of members of a hearing committee, regarding a fine for using a tube in the pool, missed the mark. The hearing was not the unit owner's goal, but a method by which he attempted to achieve his goal, the revocation of the fine. The association did not prevail on fair housing claims withdrawn by the petitioner, because this was an alternate theory and the arbitrator never issued a final ruling on it.

French Villas of Lighthouse Point Condo. Assn., Inc. v. Soltanpanah,
Case No. 99-1928 (Pasley / Final Order Denying Motions for Attorney's Fees and Costs / December 3, 1999)

- Where the unit owners denied each material allegation and asserted viable defenses, no basis exists to determine prevailing party status where the dismissal for mootness was because unit owners moved, not because the unit owners acquiesced in the relief sought by the association.

Prevailing Party (continued)

The Gardens 102, Inc. v. Berry,
Case No. 96-0196F (Goin / Final Order on Petitioner's Motion to Determine and Tax Petitioner's Attorney's Fees / May 17, 1996)

- No attorney's fees awarded to association where it was unclear that association had prevailed where unit owners agreed to provide the relief requested after husband became very ill and where unit owners denied that the windows were prohibited and no determination on the merits had been made. Also, fact that unit owners agreed to provide the relief requested immediately after receiving the petition weighed in their favor.

Glen Cove Apartments Condo. Assn., Inc. v. Weit,
Case No. 95-0489F (Scheuerman / Final Order Denying Motion For Attorney's Fees / January 17, 1997)

- Owner not considered prevailing party where association prevailed on all but one tangential issue.

Golfside of Lee Condo. Assn., Inc. v. Spicer, et al.,
Case No. 94-0478F (Grubbs / Final Order Denying Attorney's Fees / March 31, 1995)

- When case is dismissed as moot, to be "prevailing party" it must be established that: 1) respondent provided relief sought voluntarily; 2) arbitration proceeding was motivating factor in causing respondent to provide relief sought; and 3) respondent's action would have been required by law.

- When tenants vacated the unit four days before petition for arbitration was filed and association was notified of the tenant's moving plans several weeks before petition filed, petition was not motivating factor in the association obtaining relief sought and therefore, association was not "prevailing party."

The Greens of Tampa, Inc. v. The Greens of Town and Country Condo. Assn., Inc.,
Case No. 94-0104F (Scheuerman / Final Order / April 20, 1994)

- Although most issues presented in the petition relate to election, each separate challenge to election is based on separate facts and alleged different violations, and the claims should be considered separate and distinct for prevailing party determination.

Gulf Harbors Condo., Inc. v. Arleo,
Case No. 94-0398F (Goin / Final Order on Petitioner's Motion for Attorney's Fees / April 6, 1995)

- Where unit owner alleged that cat was removed eight months prior to the filing of the petition for arbitration and where association did not suggest or state that there was any evidence disputing such allegation, association could not be considered prevailing party.

Haidar v. Tarpon Woods Condo. IV Assoc., Inc.,
Case No. 00-1526 (Pine / Final Order Awarding Attorney's Fees / October 13, 2000)

- Where Petitioner failed to secure sought relief, due to refusal to file documents ordered by the Arbitrator, Respondent is the prevailing party.

Prevailing Party (continued)

High Point of Delray West Condo. Assn., Section 3, Inc. v. Lester,
Case No. 93-0132F (Grubbs / Final Order / June 15, 1994)

- Where association failed to present any evidence to support its allegation that it had demanded compliance with declaration prior to filing arbitration, and where unit owners denied they had received any notice of the violation prior to receipt of petition, association would not be considered a prevailing party when case was mooted because unit owners immediately cured violation upon receipt of petition.

Holfve v. Ocean Park North Condo. Assoc., Inc.,
Case No. 02-5714 (Coln / Final Order Awarding Attorney's Fees and Costs / November 27, 2002)

- A party may be considered a prevailing party, even where there is no determination on the merits, where the action by the party was the motivating factor or catalyst for the desired action and the action was required by law. Where the association filed a motion to dismiss alleging the failure of the unit owner to provide pre-arbitration notice, the association is the prevailing party where the petition is dismiss for the failure of the petitioner to provide pre-arbitration notice to the respondent.

Horizons West Condo. Number 3 Assn., Inc. v. Penaranda,
Case No. 94-0065F (Goin / Final Order Denying Motion / March 22, 1994)

- Filing of petition could not have been motivating factor because violations were cured prior to respondents being served with a copy of the petition, and accordingly association was not prevailing party.

Imperial Oaks Condo. Assn., Inc. v. Burnside, et al.,
Case No. 93-0322 (Player / Final Order of Dismissal / May 23, 1994)

- No fees awarded to association where record did not demonstrate that act of tenants in vacating unit was required by law; tenants denied acts of vandalism, and claims of vandalism, even during pendency of the arbitration, lacked believability.

Kelly Greens Single Family Condo. III Assn., Inc. v. Laudati,
Case No. 94-0417F (Price / Final Order on Motion for Attorney's Fees and Costs / December 21, 1994)

- Where due to health problems developing after the filing of the petition, unit owner determined to give in to demands of association, there was no prevailing party since the act providing the association the relief it sought was not due to the filing of the petition.

La Brisa Assn., Inc. v. Boeckeler,
Case No. 00-0857 (Pine / Final Order on Request for Attorney's Fees / May 30, 2000)

- Where the petitioner/association obtains the relief requested, petitioner is a prevailing party. Respondent's argument, that "there was nothing to prevail against" because he never disputed the validity of the policy in question, was not adopted.

Prevailing Party (continued)

La Mirage Condo. Assn., Inc. v. Carret,
Case No. 98-5480 (Cowal / Final Order on Attorney's Fees / February 26, 1999)

- Unit owners were advised by the association, five months prior to being served with the petition, that their building alterations violated the condominium documents but took no action to remedy the violation until they were served with the petition, when they obtained a building permit. Only after service of the petition did they bring the property into compliance with the condominium documents. Therefore, the association was the prevailing party.

La Mirage Condo. Assn., Inc. v. Four Development, Ltd., et al.,
Case No. 95-0238F (Price / Final Order on Motion for Attorney's Fees and Costs / September 14, 1995)

- Where one respondent vacated the unit because of incarceration, and another vacated voluntarily, act of second respondent in vacating unit was related to merits of case and association is the prevailing party.

Lake Tyler Condo. Assn., Inc. v. O'Donnell, et al.,
Case No. 95-0022F (Draper / Final Order on Petitioner's Motion for Attorney's Fees and Costs / March 16, 1995)

- Tenants found to have vacated unit in response to filing of petition for arbitration where they vacated the unit after the petition was filed and failed to raise other motivating factors.

- Association not awarded fees where it did not prevail in a legal sense, i.e., where respondents' action was not required by law.

- Where acts complained of by association as nuisance and immoral, improper, offensive or unlawful were domestic violence by unwelcome male visitors to unit, for which tenants were not responsible, and events which occurred off the condominium property or did not affect any condominium resident, it was not shown that tenants' move from the unit/cessation of such behavior was required by law.

Lakeshore 9 Condo. Assn., Inc. v. Vazquez, et al.,
Case No. 97-2445 (Scheuerman / Final Order on Request for Attorney's Fees / April 17, 1998)

- Owners assessed attorney's fees when they removed dog, thereby rendering the case moot, and then surreptitiously brought the dog back to the unit.

Landmark Oaks Condo. Assn., Inc. v. Rice, et al.,
Case No. 96-0111F (Draper / Final Order on Respondent's Motion for Attorney's Fees and Costs / July 9, 1996)

- Term "prevailing party" in s. 718.1255, F.S., may include a respondent where the petitioner takes a voluntary dismissal due to lack of jurisdiction.

Prevailing Party (continued)

Laurels at Margate Condo. Assn., Inc. v. Slonecky,
Case No. 93-0039F (Grubbs / Final Order on Motion for Attorney's Fees / July 28, 1994)

- Association was not prevailing party where voluntary compliance with demands of association achieved prior to service of the petition for arbitration on the unit owner. At time of service, the case had already been moot for approximately two months.

Lessne v. Family Townhouses of the Lakes of Emerald Hills, Inc.,
Case No. 93-0247F (Goin / Final Order on Petitioners' and Respondents' Motion for Attorney's Fees / November 24, 1993)

- Where unit owners prevailed on two of eight counts, and where the association prevailed on one of the eight counts, unit owners were prevailing parties as to the two counts and the association was the prevailing party as to the one count in which it succeeded.

Lime Bay Condo, Inc. v. Abramson,
Case No. 98-2733 (Oglo / Final Order on Attorney's Fees / March 3, 1998)

- Unit owners/respondents were the prevailing party where association agreed to let them keep their dog as an accommodation to their handicap.

Loveland, et al. v. Harbor Towers and Marina Condo. Assn., Inc.,
Case No. 00-0067 (Scheuerman / Final Order on Requests for Attorney's Fees / March 23, 2000)

- Where respondent/association was given copies of petition and orders thereon by petitioner prior to service of the order requiring answer on the respondent, and where respondent undertook corrective action after it became aware of the filing of the petition but prior to service of the order requiring answer, and filed a notice of appearance, arbitrator concluded that the association has provided the relief demanded in the petition in response to the filing of the petition for arbitration. Hence the petitioner prevailed.

Martinez, et al. v. The Village Condo. Assoc., Inc.,
Case No. 01-2471 (Scheuerman / Final Order Denying Motion for Attorney’s Fees / May 4, 2001)

- Where owners/petitioners sought to challenge election shortly prior to the notice and conduct of the next annual election that would moot out election challenge, and where arbitrator accordingly dismissed the underlying case on grounds of mootness, there was no prevailing party. The petitioners obtained none of the relief sought and mootness of the dispute was unrelated to any action taken by the party.

McKenna v. Hammock Pine Village II Assn., Inc.,
Case No. 99-0586 (Anderson-Adams / Final Order on Attorney's Fees / July 9, 1999)

- Unit owner determined to be prevailing party where the arbitrator ruled that the notice of meeting/election was inadequate and declared election null and void. The fact that arbitrator did not order a new election because one had already been held while the case was pending does not affect this determination.

Prevailing Party (continued)

Meadowbrook Lakes Condo. Apartments Building No. 8, Inc. v. Renno,
Case No. 93-0176F (Goin / Final Order on Petitioner's Motion for Attorney's Fees / September 8, 1993)

- Where a unit owner removed unauthorized dog from unit after the filing of the petition for arbitration by the association seeking removal of the dog, facts supported conclusion that dog was removed as a result of the arbitration and not for reasons unrelated to the arbitration, and hence the association was the prevailing party.

Melody, et al. v. Landmark Oaks Condo. Assn., Inc.,
Case No. 96-0111F (Draper / Final Order On Respondent's Motion For Attorney's Fees and Costs / July 9, 1996)

- Term "prevailing party" in s. 718.1255, F.S., may include a respondent where the petitioner takes a voluntary dismissal due to lack of jurisdiction.

Middle River Villas Condo. Inc. v. Scott-Johnson,
Case No. 02-4517 (Coln / Final Order Denying Attorney's Fees and Costs / October 7, 2002)

- In a pet arbitration action, where the pet that is the subject of the arbitration dispute dies of natural causes, thereby mooting the issue prior to the entry of an order awarding relief, no party has prevailed and neither the petitioner nor the respondent is entitled to an award of attorney's fees and costs.

Moss v. Abaco Village,
Case No. 92-0012 (Player / Final Order / July 28, 1992)

- Neither association nor unit owners should be considered a prevailing party where each received some relief they requested.

Neate v. Cypress Club Condo. Inc.,
Case No. 98-5381 (Powell / Final Order on Motion for Attorney's Fees / January 8, 1999)

- Where it was not clear that the association prevailed in the underlying case, and in fact it appeared that the unit owner prevailed, association's motion for fees denied. Dispute was whether association could require unit owner to affix a sticker to his car revealing his apartment number. Since the association gave the unit owner permission to use a blank sticker, it provided relief to the unit owner and case was dismissed as moot.

Neil v. Kingswood Assn. No. 2, Inc.,
Case No. 99-1504 (Anderson-Adams / Final Order on Attorney's Fees / August 20, 1999)

- Association awarded approximately half its fees, where it prevailed on two out of four issues, the unit owner prevailed on one issue but was unrepresented, and the other issue was dismissed with no prevailing party.

- Where records claim was dismissed when association provided copies of the records that the petitioning owner alleged had been withheld by association, unit owner was nevertheless considered the prevailing party as the association's action supported the inference that the filing of the petition was the motivating factor behind the association's action.

Prevailing Party (continued)

North Oaks Condo. Assn., Inc. v. Ehrhard,
Case No. 99-0314 (Cowal / Final Order on Attorney's Fees / March 29, 1999)

- Where underlying case was dismissed as moot after unit owner stated that dog had been removed, and where unit owner responded to motion for fees but offered no information which would rebut the presumption that the petition was the motivating factor in his compliance, association was determined to be prevailing party.

North Oaks Condo. Assn., Inc. v. Grant, et al.,
Case No. 00-0012 (Pine / Partial Final Order / January 31, 2000)

- When petition was brought to have dog removed, and when petitioner was unable to establish that dog had been on condominium grounds at any time since a date one month prior to the filing of the petition, the petition is moot when filed and the petitioner is not a prevailing party even if respondents are ordered to comply with pet restrictions in future.

Oakes, et al. v. Vera Cruz Condo. Assoc., Inc.,
Case No. 00-1461 (Draper / Final Order on Attorney's Fees / November 30, 2000)

- Association was not awarded its attorney's fees & costs where unit owners voluntarily dismissed their petition alleging a violation of the federal fair housing laws. The undisputed reason for the petitioners' action was that their request for punitive damages was dismissed by the arbitrator based on precedent in the arbitration program; the petitioners instead filed their claim in federal court where punitive damages are available. Second, the petitioners had established a prima facie case of housing discrimination. Therefore, the association did not prevail in the arbitration.

Olive Glen Condo. Assn. v. Perez,
Case No. 92-0126 (Player / Final Order Denying Attorney's Fees / October 14, 1992)

- Association not prevailing party where unit owner, in order to end dispute, agreed to apply for association approval of tenant/fiancé. Even though association obtained relief requested, association did not prevail because relief obtained was not required by law as fiancé was not "tenant" under association documents, but was a member of the unit owner's family.

Olive Glen Condo. Assn., Inc. v. Santana, et al.,
Case No. 97-0276F (Draper / Final Order on Attorney's Fees and Costs / August 14, 1997)

- Where association prevailed on one of two claims, fees awarded on successful claim. Association was considered to be the prevailing party, even though petition was dismissed as moot, where dog was removed from unit and the reason given for doing so was continued turmoil and great expense of the arbitration.

- Association did not prevail on claim against unapproved tenant where tenant left unit because he was incarcerated. Petition was not the motivating factor for tenant's departure.

Prevailing Party (continued)

Ovanes, et al. v. The Marina at the Bluffs Condo. Assoc. Inc.,
Case No. 02-5672 (Coln/ Final Order on Attorney's Fees / October 29, 2002)

- Where the association's motion to dismiss provides the catalyst for the unit owner to dismiss the petition for arbitration, the association is the prevailing party and is entitled to an award of attorney's fees.

Palm Club West Village I Condo. Assn., Inc. v. Distefano,
Case No. 94-0278F (Draper / Final Order / September 2, 1994)

- Action moot where tenant surrendered apartment and association was prevailing party.

Park Place Condo. Assn., Inc. v. Massicotte, et al.,
Case No. 95-0306F (Scheuerman / Final Order on Petitioner's Motion for Attorney's Fees / October 26, 1995)

- Association not prevailing party where unit owner submitted lease application, ending dispute. Even though association obtained the relief it requested it did not prevail because relief it obtained was not required by law. Declaration required notice only to association of bona fide lease; rules required $25 fee and approval of board, thus rule was void and application not required.

Patriot Square Condo. Assn. of St. Petersburg, Inc. v. Mitchell,
Case No. 96-0010F (Grubbs / Final Order on Petitioner's Motion for Attorney's Fees / June 24, 1996)

- Association's voluntary dismissal of claim partially mooted by unit owner's partial compliance by painting door and association's completion of maintenance for unit owner rather than incurring additional attorney's fees, held not to detract from its status of prevailing party.

Pine Island Ridge Condo. "B" Assn., Inc. v. Levitt,
Case No. 99-1978 (Pasley / Order Granting Motion for Rehearing and Order Amending Final Order / March 24, 2000)

- In the underlying dispute, the association's relief requested, removal of the patio enclosure, was denied because the association was found to have been estopped from requiring removal of the enclosure. Although the association was permitted to require the unit owners to either remove or alter a portion of the enclosure, the unapproved kick-panel, the unit owners succeeded on the significant issue in the dispute; therefore, the unit owners were the "prevailing party." Therefore, the association's motion for attorney's fees and costs was denied.

- Although the respondents prevailed in the underlying case, the prior final order awarding the respondents their fees and costs was vacated because the respondents failed to plead for attorney's fees during the pendency of the underlying arbitration proceeding.

Prevailing Party (continued)

Pine Ridge at Lake Tarpon Village II Condo. Assn., Inc. v. Conroy, et al.,
Case No. 99-0936 (Powell / Final Order on Motion for Attorney's Fees and Costs / July 30, 1999)

- Although dispute was rendered moot when unit owners cured the violation, the association was determined to be the prevailing party where the facts presented by the unit owners (that they had agreed to resolve the matter and had discussed methods of correcting the floor tile violation) were insufficient to overcome the presumption that the filing of the petition motivated the unit owners' action. A significant consideration was the fact that the violation was not cured until nearly four months after the filing of the petition.

Pine Ridge at Palm Harbor Condo. Assn., Inc. v. Mourandian, et al.,
Case No. 99-0119 (Scheuerman / Final Order on Motion for Attorney's Fees / April 20, 1999)

- Tenant was the prevailing party where petition was dismissed for failure of association to give pre-litigation notice to tenant as required by case law.

Pine Ridge III Condo. Assn., Inc. v. Rea, et al.,
Case No. 93-0407F (Price / Final Order on Motion to Determine and Award Reasonable Attorney's Fees / May 13, 1994)

- There need not be a determination on the merits of a case for purposes of a fee award, if the applicable statutory provision provides for fees to a prevailing party. Even if an underlying arbitration proceeding is dismissed as moot, prevailing party attorney's fees may still be awarded.

Pine Rush Villas Condo. Assn., Inc. v. Storman, et al.,
Case No. 99-0144 (Draper / Final Order on Attorney's Fees / March 12, 1999)

- Association deemed to be the prevailing party in dispute over nuisance dog where the occupant of the unit moved, along with his dog. Although case was dismissed as moot when tenant vacated the unit, prevailing party attorney's fees could be awarded. The timing of the tenant's move, after the petition was filed, raised the presumption that the arbitration action was the catalyst. Where the unit owner failed to respond to the association's petition and offered no other explanation for the tenant's departure, arbitrator concluded that the arbitration action was responsible for attaining the result sought by association. $1,176.00 in attorney's fees awarded.

Quatraine Condo. II Assn., Inc. v. Borojerdi, et al.,
Case No. 95-0456F (Draper / Final Order on Attorney's Fees / April 8, 1996)

- Association determined to be prevailing party where tenant left unit with illegal dog, after having lived there eight years and after negotiating settlement with association to be held harmless for association's fees if she moved from unit. Timing of her action indicated petition was motivating factor for her action.

Quiroli v. Spanish Trail Condo. Assn., Inc., et al.,
Case No. 99-1533 (Draper / Final Order on Attorney's Fees / October 18, 1999)

- Unit owner determined to be the prevailing party where boat dock space was awarded to him by the association the day after the answer was due to be filed by the association.

Prevailing Party (continued)

Regency Highland Condo. Assn., Inc. v. Knight,
Case No. 95-0023F (Draper / Final Order on Petitioner's Motion for Attorney's Fees and Costs / March 28, 1995)

- Attorney's fees not awarded where association was not clearly prevailing party. Though case mooted by unit owner selling her unit, and moving away with her pet, unit owner has raised several defenses including right under the fair housing act which appeared substantiated by the record. In addition, the association's action against the unit owner, while not frivolous, unreasonable or groundless, misapprehended the association's responsibility under the fair housing act to waive, not necessarily repeal, pet restriction in the case of a unit owner whose disability requires companionship of pet.

Rose v. The Village of Kings Creek Condo. Assoc., Inc., and Buttari,
Case No. 01-2661 (Draper / Final Order on Attorney's Fees / June 6, 2001)

- Unit owner petitioner who obtained order requiring association to distribute one-page candidate information sheets in the future (rather than 2-page sheets, with one side in Spanish and one side in English), was found to be prevailing party.

Royal Park Condo. Apartments, Inc. v. Lynn,
Case No. 01-2516 (Scheuerman / Final Order on Motion for Attorney's Fees / December 18, 2001)

- Where association commenced action seeking to require owner to display parking decal on windshield, association found to be the prevailing party even though final order did not grant exact placement desired by association, where owner was required to place sticker at a place designated in the summary judgement of the association other than the lower driver side of the windshield.

Sarasota Lakes Co-Op, Inc. d/b/a Sarasota Lakes RV Park v. Paoline, et al.,
Case No. 96-0410F (Draper / Order on Respondents' Motion For Award Of Attorney's Fees and Costs / December 31, 1996)

- Respondents who prevailed on one of three issues awarded fees for time spent on this issue and fees for 33% of time spent on general representation. Respondents prevailed where final order prohibited enforcement of occupancy restriction against them. However, respondents did not prevail on claim where arbitrator ordered them to either remove their too-long trailer from park or cut it down to size specified in documents.

Saxon Wood Condo. Assn., Inc. v. Harte,
Case No. 95-0445F (Draper / Final Order on Attorney's Fees / April 5, 1996)

- Association determined to be prevailing party in action dismissed as moot where timing of unit owner's decision to sell unit, five months following her service with petition for arbitration, indicated petition was catalyst for unit owner's action.

Prevailing Party (continued)

Second Forum Condo. Corp., Inc. v. Forum Board of Governors,
Case No. 96-0314F (Goin / Final Order On Petitioner's Motion For Attorney's Fees / September 18, 1996)

- No attorney's fees awarded to association where it was not prevailing party and petition for arbitration was dismissed for lack of jurisdiction even though association ordered to file petition by circuit court judge after respondents, in circuit court case, filed a motion to dismiss and argued that case should be in arbitration; court did not make a determination of jurisdiction but ordered arbitrator to make determination and report back.

Shipp's Landing Condo. Assn., Inc. v. Layton,
Case No. 94-0319F (Richardson / Final Order / August 26, 1994)

- Where unit owner carpeted over contested tile area prior to association's filing of petition, unit owner was prevailing party in the dispute which was moot when filed even where association was unaware of carpeting.

Shore Haven Condo. Assn. v. Drake,
Case No. 93-0043F (Price / Final Order on Motions for Attorney's Fees / April 30, 1993)

- The underlying arbitration proceeding was instituted by the association seeking to have certain unit owners remove storage sheds constructed on the common elements. The final order determined that the association violated the declaration initially in building the sheds while under developer control; that the association violation had been cured by destruction of the sheds by Hurricane Elena; and that the association again violated the declaration by reconstructing the sheds after the destruction. The final order determined that the sheds had never been lawfully made a part of the common elements, and accordingly ordered the sheds removed by the association, with the cost of removal borne by the association. In the alternative, the association was given the option of obtaining the requisite vote to add the sheds as a limited common element. In its initial petition for arbitration, the association had in the alternative requested issuance of an injunction requiring the unit owners to remove the storage sheds or, in the alternative, an order enabling the association to remove the storage sheds and recover the expenses of removal from the unit owners. Although association may have achieved technical victory in having the option of removing the sheds at its own expense, the real prevailing party was the unit owners because the association failed to affix responsibility for removal of the sheds on the unit owners.

Sigismondi v. Kendall Acres West Condo. Assn., Inc.,
Case No. 99-1962 (Powell / Final Order on Motion For Costs / November 29, 1999)

- Motion to recover $50 filing fee dismissed as moot after association paid unit owners the $50 to resolve the matter. The unit owners requested to be named the prevailing party in the underlying dispute (which had been dismissed as moot when the roof was repaired), because the determination might have a bearing on a possible proceeding in another forum. The arbitrator rejected the request because it would unnecessarily prolong the fee proceeding and engage in an inquiry which was abstract and hypothetical.

Prevailing Party (continued)

Spanish Trace Condo. Assn. Inc. v. A.J.E. International Corp., et al.
Case No. 99-1063 (Pine / Final Order on Attorney's Fees / June 23, 1999)

- Where respondents complied with the petitioner's demands only in response to the petition, filing of the petition resulted in upholding petitioner's right to enforce condominium documents. Petitioner is prevailing party.

Stone's Throw Condo. Assoc. Inc. v. Gillette,
Case No. 02-5238 (Scheuerman / Final Order on Request for Attorney's Fees / August 19, 2002)

- Where association succeeded in obtaining a final order banning the owner's dog from the patio in the owner's absence, required the owner to clean dog urine from the patio, and required the wearing of a bark restraining device, the association should be considered the prevailing party even though the arbitrator did not award the association its claimed damages to the structure of the patio. The association was awarded 60% of its reasonable fees.

Sun Properties, et al. v. Golfview Club Condo. Assn. #3, Inc.,
Case No. 96-0150F (Scheuerman / Final Order on Motion for Award of Attorney's Fees / May 1, 1995)

- No prevailing party where election dispute became moot upon conduct of new election.

Suncrest Townhouse Condo., Inc. v. Bottorff,
Case No. 92-0177 (Player / Final Order on Petitioner's Motion for Award of Attorney's Fees / March 25, 1993)

- Party can be a prevailing party even if action not resolved on the merits; this proposition applies when dispute becomes moot because the opposing party voluntarily provides the relief sought. Where tenants of unit owner voluntarily ceased baby-sitting service, association was prevailing party because it achieved the result sought.

Szczepanski v. Cypress Bend Condo. II Assn., Inc.,
Case No. 97-0440F (Scheuerman / Final Order on Motion for Attorney's Fees / December 31, 1997)

- Where petition of resident/non-unit owner dismissed for lack of standing as resident and for lack of jurisdiction over petition filed by non-owner, there was no prevailing party, and no jurisdiction to assess fees; thus, association not awarded its fees.

The 3 Kings Condo. Inc. v. Talsky, et al.,
Case No. 99-1977 (Draper / Final Order on Attorney's Fees / February 23, 2000)

- Where non-prevailing party raised defenses to petition for arbitration for the first time in their response to fee motion, despite having filed an answer to the petition, defenses would not be considered by the arbitrator.

Prevailing Party (continued)

The Towers of Quayside No. 2 Condo. Assn., Inc. v. Queller, et al.,
Case No. 96-0389F (Goin / Final Order On Petitioner's Petition For Award Of Costs and Attorney's Fees / December 9, 1996)

- Association determined to be prevailing party where parties entered into settlement agreement providing that unit owners would permanently remove dog from the premises.

- Where parties entered into settlement agreement just before the scheduled final hearing, which provided that unit owners would permanently remove dog from premises, association awarded attorney's fees in part because it had to prepare for final hearing and unit owners' numerous affirmative defenses.

The Trails at Royal Palm Beach, Inc. v. Wargovich,
Case No. 95-0261F (Goin / Final Order on Petitioner's Motion for Attorney's Fees and Costs / December 11, 1995)

- Where final order determined that the association had willfully failed to produce one record, but had produced five other records requested by the owner, on overall count involving access to records, association was the prevailing party.

The Trellises Condo. Assoc., Inc. v. Stier,
Case No. 01-2367 (Pasley / Amended Final Order on Motions for Attorney's Fees and Costs / April 26, 2001)

- The petition alleged that the respondent was violating the declaration by maintaining a caged rabbit on her porch. When the rabbit died, the petitioner denied that the dispute was moot because the respondent had in the interim obtained a bird, the bird was later determined to not be a violation of the declaration. Therefore, the petitioner was the prevailing party with regard to the rabbit claim, and the respondent was the prevailing party with regard to the bird claim.

Valencia Condo. Residences Assn., Inc. v. Banoub,
Case No. 00-0855 (Pine / Final Order on Motion for Attorney's Fees / May 22, 2000)

- Where petitioner association filed a petition primarily asking that unit owners be required to furnish a key without special conditions and arbitrator ordered unit owners to furnish a key without special conditions, petitioner is the prevailing party even though relief was not awarded on secondary claims for lock-smithing and other expenses.

- Where association prevailed on primary issue for which petition was brought but not on minor issues (including lock-smithing bill) the association will be awarded reimbursement for reasonable expenditures of attorney's time except those entries clearly related to minor issues on which association did not prevail.

- Petitioner requested copy of respondents'/unit owners' key "without special conditions" and belatedly described a policy for safeguarding keys to all units. Because policy did not track special conditions respondents had demanded, respondents would not become prevailing parties even if they could prove that the policy was a new one promulgated in response to their actions.

Prevailing Party (continued)

Villa v. Trianon Park Condo. Assn., Inc.,
Case No. 99-1938 (Draper / Final Order on Attorney's Fees / December 20, 1999)

- Unit owner prevailed in claim regarding election irregularities where association agreed to hold election three weeks earlier than usual and in compliance with Chapter 718 and the division's rules. In past election, secretary of the association who was also a candidate, supervised vote tabulation. This is a clear violation of Rule 61B-23.0021, which requires that the committee that verifies ballots be impartial.

Villa Venezia, a Condo. Assn., Inc. v. Licona,
Case No. 94-0166F (Scheuerman / Final Order / June 6, 1994)

- Association not clearly the prevailing party where although unit owner agreed to remove a portion of the cement patio, unit owner was permitted to retain a portion of the cement patio in settlement.

No. 2 Condo. Assn., Village Green, Inc. v. Jiminez, et al.,
Case No. 98-4235 (Draper / Final Order on Attorney's Fees / November 19, 1998)

- Where underage tenant vacated unit after petition filed and case was dismissed as moot, a presumption arose that association prevailed on its claim to remove tenant. However, presumption was rebutted by claim that tenant was engaged to be married to the unit owner and left only because engagement was broken off and association did not dispute the claim.

Wekiva Country Club Villas Homeowners' Assn., Inc. v. Gray, et al.,
Case No. 94-0395F (Grubbs / Order on Motion for Attorney's Fees and Costs / October 11, 1995)

- Although petitioner did not obtain relief requested, i.e. that the respondents complete the necessary forms and submit them to the association for approval of the tenant, association was the prevailing party when the unauthorized tenant moved out because respondent voluntarily took action that, although more severe than the remedy sought by the association, cured the violation.

West Wind Estates Condo. Assn., Inc. v. Becker,
Case No. 94-0301F (Grubbs / Order on Motion for Attorney's Fees / August 15, 1995)

- Where there is a decision on the merits, the prevailing party on the significant issues in the litigation is the party that should be considered the prevailing party for purposes of an award of attorney's fees.

- Where there is no decision on the merits, the question of which party is the prevailing party must be determined by the particular facts of the case and the timing of the act that caused the action to be dismissed. A party may be considered the prevailing party if the filing of the petition was the motivating factor or catalyst for the desired action and the action was required by law.

- A party can be considered the prevailing party even though the case is moot where it has obtained the relief sought in the arbitration; where the petition was the catalyst that motivated the opposing party to take the action causing the case to become moot; and where the action taken was required by law.

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

IN RE: PETITION FOR ARBITRATION

Oceanside Terrace
Condominium Association, Inc.,

Petitioner,

v. **Fees Case No. 00-0596**
Rel. Case No. 99-1551

David Greenlee,

Respondent.
_____/

SUMMARY FINAL ORDER

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association commenced this proceeding on March 24, 2000 in order to recover $1,582.50 in attorney fees. The underlying proceeding had concluded with the parties entering into a settlement agreement that called for respondent to repair or replace a wooden fence situated to the rear of his unit. Under the settlement agreement, if a party failed to timely perform, the party at fault would be responsible for the other's attorney's fees.

The association commenced this fees proceeding alleging that respondent had failed to timely perform under the settlement agreement. In response, the respondent alleged that the association was responsible for the breach of the agreement. An

evidentiary hearing was conducted, and a partial summary final order was entered on July 3, 2000. The order found that the parties were equally negligent for the failure by the respondent to timely repair the fence, and that respondent was therefore liable for 50% of the association's reasonable costs and fees in this matter.

Under the settlement agreement executed by the parties in the underlying case on November 23, 1999, respondent agreed to pay $500 of the association's attorney's fees on or before January 1, 2000. This amount has presumably been paid. The parties also agreed in their settlement agreement that if any party defaulted under the settlement agreement, the prevailing party is entitled to recover all attorney's fees incurred "from the inception of this matter." The statute entitles the prevailing party to recover its costs and reasonable attorney's fees from the other party. The arbitrator will accordingly determine reasonable attorney's fees, deduct the $500.00 already paid, and will enter an order requiring payment of one-half of the remaining fees and costs.1

The association seeks to recover the filing fee of $50 plus the mediation fee of $150, for total costs of $200.00. Attorney's fees sought during the period May 11, 1999 through March 31, 2000, amount to 13.70 hours billed at amounts of $125.00 to $150.00 per hour, for a total of $2,145.00. Counsel for the association filed a supplemental statement covering activities undertaken between April 3, 2000 through June 29, 2000. For this period, the association seeks recovery for 6.20 hours billed at

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1 Respondent's argument that his letter of March 6, 2000, excuses him from paying fees pursuant to s. 718.112(2)(a), F.S., is rejected. The statute contemplates that a letter prior to the commencement of the litigation must be sent; here, the letter was directed after the conclusion of the case. The purpose of the statute is to discourage inchoate litigation. This purpose is not

the same hourly amounts, for a total of $875.00.

The amounts of $125.00 to $150.00 per hour are reasonable given the type of case, the amounts charged by attorneys with similar experience awarded in these arbitration proceedings, and given the rates typically charged in the community in which the condominium is located. No rationale is offered for the differential rate structure, and the arbitrator finds that the amount of $135.00 per hour for all activities is reasonable. The association shall therefore be compensated at the rate of $135.00 per hour.

Considering first the period from May 11, 1999 to March 31, 2000, it is concluded that overall, the amount of time expended performing the activities reported is reasonable, subject to certain minor adjustments. The time spent preparing the petition is shown to be 2.8 hours, a reasonable amount. Reviewing the answer required 1.2 hours of counsel's time; this cannot be said to be unreasonable. The sum of .50 hour to research how to proceed to default a party is not reasonable and is reduced to .20 hour. The sum of .20 hour to review the notice of change of arbitrator is reduced to .10 hour. The .30 hour spent reviewing an order of the arbitrator on November 1, 1999, is reduced to .20 hour. The entry of November 23, 1999, showing .60 hour for drafting a letter to the arbitrator, is reduced to .20 hour. Total deductions from the 13.70 hours amount to .90 hour, leaving 12.8 hours subject to recovery.

For the period April 3, 2000 through June 29, 2000, the association paid its

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furthered where the litigation is already commenced or concluded.

attorney for 6.2 hours of work. An examination of the time and activity sheets of counsel reveals no excesses other than the .40 hour claimed on June 2, 2000, for review of an order. This sum is reduced to .20 hour. The total for this segment is thus 6.0 hours.

The combined figures show that the association generated reasonable attorney's fees represented by 19.0 hours billed at $135.00 per hour, or $2,565.00, less the $500.00 previously paid, leaving $2,065.00. Half of that sum is $1,032.50, to which is added $100.00, one half of the recoverable costs, to yield a total liability of $1,132.50. Respondent shall pay this amount to the association within 30 days on the entry of this final order.

DONE AND ORDERED this 4th day of October, 2000, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. Mail to the following persons on this 4th day of October, 2000: Edward Dicker, Esquire, St. John, Dicker, Caplan, Krivok, and Core, 500 Austalian Avenue South, Suite

600, West Palm Beach, Florida 33401, and to David Greenlee, 1801 South U.S. Highway One, Unit 12D, Jupiter, Florida 33477.

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

Oceanside Terrace
Condominium Association, Inc.,

Petitioner,

v. **Fees Case No. 00-0596**
Rel. Case No. 99-1551

David Greenlee,

Respondent.
_____/

PARTIAL SUMMARY FINAL ORDER

Comes now, the undersigned arbitrator, and enters this order as follows:

The association commenced this proceeding on March 24, 2000 in order to recover $1,582.50 in attorney fees. This case is unusually-postured in that the parties in the underlying case had attended mediation and had settled the case, but a provision of the settlement agreement linked timely performance under the agreement to attorney's fees. Under the agreement, the respondent paid $500 in fees, and the parties agreed that if a party did not timely perform under the agreement, the arbitrator retained jurisdiction to award full prevailing party fees. Although enforcement of a final order or a settlement agreement would generally lie with the courts, the arbitrator accepted this fees case despite the fact that it involves a determination of whether the

order/agreement had been breached, on the premise that the arbitrator had authority in the first instance to award fees, that the parties could properly agree to waive fees based on full and timely performance, and that the aspect of fees could be re-examined in this context.

The settlement agreement signed by the parties on November 23, 1999, provided first, the association would remove the vegetation growing near a fence bordering respondent's unit, within 10 days of execution of the settlement agreement, and that the respondent would repair or replace the fence surrounding his unit within 60 days. If the fence was repaired, instead of replaced, respondent was obligated to pressure clean and seal the fence. Screens surrounding the fenced area were to be repaired by the respondent within 90 days. The association maintains that the owner did not timely comply with the settlement agreement. Respondent maintains that the association's actions prevented timely performance, thereby excusing noncompliance.2

An evidentiary hearing was held in this fees proceeding on June 29, 2000. According to testimony at the final hearing that was conducted by teleconference call, the association within 10 days of the agreement, as called for, removed the bushes growing along the fence, leaving a strip of bare soil in place of the bushes. Subsequently, Mr. Greenlee pursuant to the settlement agreement, pressure-cleaned his fence in late December 1999 or early January 2000, and at that time re-attached any boards that had become detached. Unfortunately, he did not proceed to reseal the

2 The respondent has since pressure cleaned the fence once again, has applied sealant, and has repaired the screens, thus establishing current compliance. The issue of the timeliness of

wooden fence within a reasonable time of the pressure-cleaning operation. While a delay of several days may have been reasonable and perhaps necessary to permit the fence to dry out after the pressure-cleaning and before sealing, Mr. Grille waited until January 17 to purchase sealant. In the meantime, it had rained several times, and the rainwater splashed sand up on the fence. The action of the rain is seen in a very pronounced fashion in photographs such as 1J that features the board running immediately parallel to the ground. It is caked with loose dirt and sand, with the heaviest density of dirt occurring at ground level near the soil line. The level of the dirt in the bed has virtually risen to touch the bottom of the fence due to the erosive force of the rain.

The testimony also established that in the lull between the pressure-cleaning of the fence and sealant being applied, the association caused the sidewalk running parallel to the fence to be pressure-cleaned as part of routine maintenance. The sidewalk running along the fence line contained some sediment and dirt from the plant extraction performed earlier by the association pursuant to the settlement agreement. While the exact date of the sidewalk cleaning was not stipulated to, based on the testimony presented, it is concluded that the sidewalk was cleaned on or prior to January 17, and within 4 or 5 days of that date. Greenlee testified that the association's pressure-cleaning caused dirt and sand from the sidewalk to rise up and become embedded in the fence, thus preventing the application of sealant without once again pressure-cleaning the fence. Obviously, sealant should not be applied when sand and debris are present

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performance must be decided for the purpose of ruling on the request for attorney's fees.

on the surface to be sealed. The association denied causing this damage, but the photographs admitted into evidence support the finding that pressure-cleaning the sidewalk resulted in sand becoming adhered to the fence such that the sand could not be removed with simple spraying or brushing. In photograph 1I, which shows a portion of the fence 3-4 feet from the ground level near the gate, the sand is shown to be blown into the cracks and indentations of the wood. This result would have not occurred this high off the ground through the action of either rainfall or the sprinkler system. Photographs 1H and 1M also support this finding.

The evidence shows that the association was negligent in the manner in which it pressure-cleaned the sidewalk. It had specific knowledge of the settlement agreement, and its employees and contractors could plainly see that the fence had been pressure-washed as called for in the agreement prior to sealant being applied. A duty was owed to the respondent to take this knowledge into account when deciding to pressure-wash at that time. Additionally, the association should have considered this fact when deciding the manner in which to pressure-wash; it should have done so in a manner that did not cause dirt to become lodged in the pre-cleaned fence. The association was also at fault in failing to take action such as cleaning the fence once respondent communicated to the association that its workmen had soiled the fence. Given the above, it is concluded that Mr. Greenlee's performance under the agreement was substantially impaired--albeit unintentionally--by the actions of the association. If the association had not negligently pressure-cleaned the sidewalk, thereby preventing the

application of sealant, Mr. Greenlee would have timely complied with his obligations under the settlement agreement.

On the other hand, respondent was contributorily negligent in waiting 3 weeks after cleaning the fence before attempting to seal the fence. During that time, the respondent is deemed to have accepted all risks normally occurring including damage due to rainfall, wind, and sprinklers.3 Respondent did not assume the risk that an outside third person would negligently behave in such a manner as to prevent Greenlee from timely performing under the agreement. Respondent was also at fault for waiting until the eve of the expiration of the 60-day period provided for cleaning and sealing of the fence to perform the sealing operation. By waiting until the deadline was upon him, respondent invited or at least allowed problems to emerge that endangered timely performance under the agreement.

It is concluded that the parties were equally negligent, and that they were equally responsible for the fact that the fence was not completed within 60 days as called for. The respondent shall therefore pay 50% of the reasonable attorney's fees incurred by the association. The association shall within 10 days present its time and activity sheets detailing activities undertaken in pursuit of its fees. Respondent shall have 10 days after his receipt to file any objections or argument in regard to the reasonableness of the fees paid, whereupon the arbitrator will issue an award of fees in the appropriate amount.

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3 In fact, it is likely that respondent, due to the delay in sealing the fence, would have been forced to pressure-wash at least the lower section of the fence again in any event due to the sand from the

DONE AND ORDERED this 3rd day of July, 2000, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Copies furnished to:
Edward Dicker, Esquire
St. John, Dicker, Caplan, Krivok, and Core
500 Austalian Avenue South, Suite 600
West Palm Beach, Florida 33401

David Greenlee
1801 South U.S. Highway One
Unit 12D
Jupiter, Florida 33477

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rainfall.

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

IN RE: PETITION FOR ARBITRATION

The Gables (Florida) L.P., a Delaware Limited Partnership, and The Gables Condominium and Club Association, Inc.,

Petitioners,

v.

Fee Case No.00-0610
Rel. Case No. 99-2099

Kal Bass, Michael Goldberg, Sam Hollander, Irwin Kott, Al Weiner, Tamas Kallos, Kathleen Hannemen, Roberto Horowitz, Jerry Rose, Kirk Landon, Irving Getz, Jim Henderson, Seymour Keith, and Robert Stone,
Respondents.
_____/

FINAL ORDER ON REQUEST FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Petitioner, the Gables Condominium and Club Association, Inc., filed its motion for costs and attorney's fees on March 29, 2000. The association seeks reimbursement for costs and attorney's fees incurred in Arb. Case No. 99-2099, in the amount of $11,262.50.

In the underlying case, the association and the developer filed a petition for arbitration against a group of individual owners who had planned and called a turnover election. The issue of whether turnover of control pursuant to s. 718.301, F.S., was

triggered was ultimately decided in favor of the petitioners. The final order entered on February 11, 2000, and the order on motion for rehearing entered on February 23, 2000, determined that under the provisions of the phase statute, future planned phases were to be considered in the percentage sellout turnover formula provided by statute, even where the developer was not currently constructing additional phases, so long as the phasing plan was being followed.

Section 718.1255, F.S., provides for a mandatory award of prevailing party costs and attorney's fees. Plainly, the association prevailed in the underlying action, having secured the relief sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, (Fla. 1992). Therefore, the association shall be awarded its reasonable costs and fees.

The respondents were given an opportunity to file a response to the motion for fees. Counsel for the respondents upon motion granted withdrew from representation of the respondents, and by order entered on May 18, 2000, the respondents were given 30 additional days in which to hire new counsel. According to the order, if they failed to hire a new attorney, the respondents were given an additional 15 days in which to file any individual response. No new attorney has appeared on behalf of the respondents, and no respondent has filed a response to the motion for fees.

The petitioner employed two attorneys. David Rogel prosecuted the case initially for petitioner until he was removed due to a conflict of interest. The association requests that Mr. Rogel be compensated for activities undertaken prior to his removal

from the case, at the rate of $225.00 per hour. The second counsel for the association, Jeremy Koss, also requests reimbursement at the rate of $225.00 per hour. Mr. Koss has been practicing law since 1986, and it is concluded that the association should be awarded $190.00 per hour for his services. The association should also be compensated at the hourly rate of $190.00 for Mr. Rogel's services. This hourly rate is determined to be customary and reasonable given the rates charged in these arbitration proceedings by attorneys of comparable experience practicing in the location of the condominium.

Mr. Koss billed the association for 8.1 hours of activities commencing on January 25, 2000. The arbitrator has examined each entry and activity taken on behalf of the association, and finds that although some of the entries appear generic and nondescript, the entries overall appear reasonable and necessary for the proper prosecution of the case. Therefore, the association will be awarded 8.1 hours at $190.00 per hour for Mr. Koss' services; this totals $1,539.00.

Mr. Rogel's activities are not all compensable. The only fees subject to an award in these proceedings are fees incurred in the arbitration proceeding. Fees incurred prior to the drafting and filing of the petition for arbitration are not fees incurred in the arbitration proceeding. Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993). Likewise, fees incurred in a collateral proceeding are not incurred in the arbitration proceeding and are not awarded. Bayview Condominium Association, Inc. v. Helmstetter, Arb. Case No. 98-4354, Final Order

(December 3, 1998). For example, in Big Pass Association, Inc. v. Aaron, Arb. Case No. 95-0305F, Final Order (October 31, 1995), the arbitrator denied recovery for time spent in a related circuit court action, and denied recovery as well for activities relating to both proceedings.

Here, Mr. Rogel began drafting the petition on October 18, 1999, and entries showing activities prior to that day are disallowed. The entries showing activities undertaken during the period from October 18 through October 25, 1999, are allowed. The activities billed on October 26 and October 27 relate to activities undertaken in the circuit court proceeding and are disallowed. Similarly, the entries dated October 26, 27, 29, November 1-19, and November 22, are disallowed as these report work undertaken in the circuit or in the appellate courts. The entry for December 8, 1999 is disallowed because it reports appellate activity. No work undertaken after December 13, 1999, the date the order disqualifying counsel was entered, will be awarded. The association shall be awarded 8.80 hours at $190.00/hr. for Mr. Rogel's services, or $1,672.00

In total, the association is hereby awarded the sum of $3,211.00, plus the $50 filing fee, for a total award of $3,261.00. Respondents are jointly and severally responsible for this entire amount which shall be paid to the association within 30 days hereof.

DONE AND ORDERED this 31st day of July, 2000, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and accurate copy of this final order has been sent by U.S. Mail to the following persons on this 31st day of July, 2000:

Jeremy A. Koss, Esquire
Phillips, Eisinger, Koss, Rothstein,
& Rosenfeldt, P.A.
4000 Hollywood Boulevard
Presidential Circle; Suite 265-South
Hollywood, Florida 33021

Kal Bass
10 Edgewater Drive
Coral Gables, Florida 33133

Michael Goldberg
10 Edgewater Drive
Coral Gables, Florida 33133

Sam Hollander
10 Edgewater Drive
Coral Gables, Florida 33133

Irwin Kott
10 Edgewater Drive
Coral Gables, Florida 33133

Roberto Horowitz
10 Edgewater Drive
Coral Gables, Florida 33133

Jerry Rose
10 Edgewater Drive
Coral Gables, Florida 33133

Kirk Landon
10 Edgewater Drive
Coral Gables, Florida 33133

Irving Getz
10 Edgewater Drive
Coral Gables, Florida 33133

Al Weiner
10 Edgewater Drive
Coral Gables, Florida 33133

Tamas Kallos
10 Edgewater Drive
Coral Gables, Florida 33133

Kathleen Mannemen
10 Edgewater Drive
Coral Gables, Florida 33133

Jim Henderson
10 Edgewater Drive
Coral Gables, Florida 33133

Seymour Keith
10 Edgewater Drive
Coral Gables, Florida 33133

Robert Stone
10 Edgewater Drive
Coral Gables, Florida 33133

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

AMY SMITH,

Petitioner,

v.

Fees Case No. 00-0711
Rel. Case No. 98-5429

OCEAN VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida Corporation,

Respondent.
_____/

FINAL ORDER DENYING MOTION FOR ATTORNEY'S FEES

This order is entered on the petitioner's motion for attorney's fees relating to underlying case number 98-5429. The motion seeks attorney's fees in the amount of $5,750.00 and costs in the amount of $256.00.

The final order in the underlying case was entered on July 1, 1999, and an order denying rehearing was entered on September 10, 1999. The petitioner's motion for attorney's fees was filed on April 17, 2000. Rule 61B-45.048, Florida Administrative Code, provides that a party seeking an award of attorney's fees "shall file a motion seeking the award not later than 45 days after rendition of the final order." Failure to timely file a motion complying with the rule "preclude[s] the party from recovering its costs and attorney's fees incurred in the arbitration."

Since the motion for rehearing was denied on September 10, 1999, any motion for attorney's fees had to be filed by October 25, 1999. In response to an order to show cause why the motion should not be dismissed as untimely, the petitioner's counsel states that he "believes

[he] filed a Motion for Fees and Costs" on September 29, 1999. Attached to the response was an affidavit of counsel's legal assistant stating it is "my belief that I mailed out the Motion…on or about September 29, 1999." The certificate of service on the motion for attorney's fees states that the motion was mailed to the arbitrator and opposing counsel on September 29, 1999. However, neither the motion, supporting affidavits nor the certificate of service are signed.

The Arbitration Section did not receive the motion for attorney's fees until April 17, 2000, as noted above. The show cause order was entered to give the petitioner an opportunity to bring forward any proof she might have to substantiate that the motion for fees was actually filed, or received by the Arbitration Section, by October 25, 1999. The petitioner's response fails in this respect. The petitioner argues that if the Arbitration Section did not receive the motion, it has been lost in the mail or misplaced under circumstances constituting excusable neglect.

The arbitration cases do not support the application of an "excusable neglect" standard with regard to the filing of a motion for attorney's fees. In Poinciana Gardens Condo. Assn., Inc. v. Hamad, et al., Arb. Case No. 95-0263F, Order Denying Motion for Attorney's Fees (August 16, 1995), the arbitrator denied a motion for attorney's fees because it was filed three days beyond the 45-day period prescribed by Rule 61B-45.048, Florida Administrative Code. The arbitrator indicated that the time limit was jurisdictional in nature. In Rivoli v. Fairways of Tamarac Condo. II Assn., Inc., Arb. Case No. 95-0401F, Order on Motion to Strike (January 25, 1996), this principle was affirmed when the arbitrator rejected a motion for attorney's fees that was mailed on the 45th day following rendition of the final order. The movant apparently believed that the 45-day period was enlarged by the 5-day mailing rule. The arbitrator rejected the movant's argument that equitable considerations should be applied to permit the motion to be heard.

"Equitable considerations cannot be applied to the Respondent's untimely filing of the motion for fees as the arbitrator's jurisdiction to decide a motion for fees and costs is limited to pleadings filed within 45 days of the date the arbitration final order is rendered." Rivoli, above. In Neate v. Cypress Club Condo. Inc., Arb. Case No. 98-5381, Final Order on Motion for Attorney's Fees (January 8, 1999), a motion for attorney's fees was denied as untimely because it was filed one day beyond the 45-day limit. Finally, in Gulfside Village Condo. Assn., Inc. v. Gator Entertainment, Inc. d/b/a Blockbuster Video, Arb. Case No. 00-1276, Final Order on Request for Attorney's Fees (July 27, 2000), a motion for attorney's fees was denied as untimely where it was required to be filed no later than July 10 but was filed on July 12. The certificate of service indicated the that the motion was mailed on July 6 but it contained an incorrect zip code and was therefore late in arriving. Despite the presence of these extenuating circumstances, the request for attorney's fees was denied.

The petitioner's motion for attorney's fees was not timely filed, and therefore the undersigned has no authority to consider it. The motion is DENIED.

DONE AND ORDERED this 30th day of August 2000, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Mark A. Kamilar, Esq., 2921 SW 27th Ave., Coconut Grove, FL 33133 and Marc A. Halpern, Esq., 150 West Flagler Street, Miami, FL 33130 this the 30th day of August 2000.

_____

Patricia A. Draper, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

TROPICAL PARK VILLAS
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 00-0718
Rel. Case No. 99-2312

RICARDO CABRERA and GEORGINA
CABRERA,

Respondents.
_____/

FINAL ORDER ON MOTION FOR FEES

The petitioner filed a motion for attorney's fees and costs totaling $1,148.30 arising out of arbitration case number 99-2312. An order was entered on April 20, 2000, allowing the respondents to file a response in opposition to the motion for fees and costs. The respondents did not reply directly, but instead sent in a letter on May 6, which referenced both case numbers and stated that the respondents did not know what the matter was about because they had not been keeping up with their mail. On May 11, 2000, the undersigned ordered the respondents to give notice within 14 days if they wished to have the underlying case no 99-2312 reopened by having the Final Order On Default set aside. The respondents have not replied; it is assumed that they do not wish to reopen the underlying case.

As the respondents were advised at the outset of the arbitration process, the law provides that in cases filed subsequent to October 1, 1997, "[t]he prevailing party in an arbitration

proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees, in an amount determined by the arbitrator." Section 718.1255(4)(k), Florida Statutes.

In the underlying case, the petition primarily asked for relief of noise and other problems attributed to the respondents' children. A final order on default was entered granting the primary relief requested. The petitioner is therefore the prevailing party in this case and the only remaining question is the amount of reasonable fees and costs to be awarded.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The reasonableness of a fee is determined by such factors as the difficulty of the question involved, the fee customarily charged in the locality for similar legal services, and the experience and ability of the attorney.

In the instant case, the petitioner's counsel has been practicing for 20 years, and is recognized as an expert in the field of community association law. The file reflects that he handled the issues competently. He requests reimbursement at rates of $175.00 per hour and, for the fee motion, $190.00 per hour. The rate of $175.00 per hour does not exceed the norm for this sort of procedure in the area in which counsel practices; however, the rise to $190 per hour for the fee motion has not been explained and will not be allowed, considering the relative simplicity of a fee motion. The prevailing party's attorney's fees are accordingly awarded at $175.00 per hour.

Page two of the affidavit filed in support of the motion has errors, such as referring to work done on the fee motion since "January 19, 1996." The fee motion should not have been prepared prior to the final order in the underlying case, which was issued on March 7, 2000, and considering the date error the time-expenditure assertion cannot be considered reliable. The

petitioner is awarded one hour of its attorney's time for preparing the fees motion and supporting documents. The affidavit does not recite the total number of hours expended prior to the fees motion, but has attached ledger reports showing a total of 3.5 hours. These charges reflect reasonable expenditures of time. Counting one hour for the fees motion, the petitioner is awarded compensation for 4.5 hours of its attorney's time at $175.00 per hour, or $787.50 in fees.

The petitioner also requests an award of costs totaling $198.30 for the filing fee, photocopies, process server, postage, and title service. Photocopies and postage are ordinary office expenses, which should be factored into the attorney's hourly rate rather than charged separately. The $67.50 for photocopies and $3.30 for postage are not awarded. The other expenditures were necessary and reasonable, and a total of $127.50 in costs is awarded.

Therefore, it is ORDERED:

The petitioner's motion for attorney's fees and costs is GRANTED in part. The respondents shall pay to the petitioner $915.00 within 30 days of the date of this order.

DONE AND ORDERED this 21st day of June 2000, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept. of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of

the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to HELIO DE LA TORRE ESQ at SIEGFRIED RIVERA LERNER DE LA TORRE & SOBEL PA, 201 ALHAMBRA CIRCLE STE 1102, CORAL GABLES FL 33134 and to RICARDO CABRERA and GEORGINA CABRERA at 3802 SW 79 AVE #117, MIAMI FL 33155, on this the 21st day of June 2000.

_____
Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

KARANDA VILLAGE III CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

Fee Case No. 00-0781
Rel. Case No. 99-1180

FRANK J. CANNIZZARO,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On April 26, 2000, the Karanda Village III Condominium Association, Inc. (association) filed a motion for an award of attorney's fees for services rendered by its attorneys in arbitration case no. 99-1180. The motion seeks $2,625.00 in attorney's fees for 17.50 hours of its attorney's time at the rate of $150 per hour.

The petition in the underlying case alleged that Frank J. Cannizzaro (respondent) was keeping a dog in his unit in violation of the declaration of condominium. In his answer, the respondent admitted keeping a dog in his unit in contravention of the documents; however, he alleged that the dog was a companion animal for his disabled girlfriend/roommate. The case was transferred to the Florida Commission on Human Relations (FCHR) for consideration of the fair housing issue on July 16, 1999. Following notification by FCHR that there was no probable cause to believe that the association had violated Cannizzaro's fair housing rights, the arbitrator reactivated the arbitration case. On March 17, 2000, a summary final order was entered adopting

the finding of the FCHR on the fair housing claim, and determining that the respondent was violating the condominium documents by keeping a dog in his unit. The respondent was ordered to remove the dog from his unit within 30 days of the date of the order. Therefore, the association is the prevailing party.

Pursuant to Section 718.1255(4)(k), Florida Statutes (1999), the prevailing party shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. The arbitrator has reviewed the time records of the association's attorney, and finds that 9.30 hours were reasonably spent on this arbitration. The association will not be awarded fees for 5.0 hours of services provided between November 4, 1998 and May 5, 1999 prior to the drafting and filing of the arbitration petition on June 9, 1999. Counsel spent 3.5 hours on May 14 and June 3, 1999 drafting the petition for arbitration; only 2.0 hours will be awarded. On July 13, 1999, .5 hour was billed for a motion for default and final order; the file does not contain any such motion, and therefore the time will not be awarded. 1.8 hours spent on a three-page final argument is reduced to 1.0 hour. Finally, .9 hour spent on September 17 and December 20 responding to the FCHR in the matter of the respondent's fair housing claim will not be compensated. Section 718.1255(4)(k), Florida Statutes, provides that "an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding…" (emphasis supplied). The arbitration was abated in order for the respondent to pursue a fair housing complaint that he could have pursued at any time, much like an abatement where a dispute is pending in court, or when a bankruptcy action is filed by a party in an arbitration action. Therefore, since the attorney's services were not provided in the arbitration proceeding, they will not be awarded. See Big Pass Association, Inc. v. Carolyn P. Aaron, Arb. Case No. 95-0305F,

Final Order on Petition for Attorney's Fees and Costs (Oct. 31, 1995) (time spent by prevailing respondent's attorney prior to receipt of petition would not be awarded. In addition, no award will be made for time spent exclusively on circuit court matters or on time spent on both circuit court and the arbitration, as no authority exists pursuant to Section 718.1255, Florida Statutes, for the arbitrator to award fees for time spent simultaneously defending a circuit court action).

Guy M. Shir, Esq., billed the association $150.00 per hour for his services. This amount is reasonable. Thus, $1,395.00 in attorney's fees shall be awarded (9.30 hours x $150/hour).

The association also seeks, and will be awarded, $50.00 in costs for the filing fee.

Based on the foregoing, it is ORDERED:

Within 30 days of the date of this order, Frank J. Cannizzaro shall pay to the Karanda Village III Condominium Association, Inc. the sum of $1,445.00.

DONE AND ORDERED this 15th day of June 2000, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Guy M. Shir, Esq., 500 Australian Avenue South, Ninth Floor, West Palm Beach, FL 33401 and Frank J. Cannizzaro, 3861 Cocoplum Circle, Coconut Creek, FL 33063 this the 15th day of June 2000.

_____

Patricia A. Draper, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

CYPRESS CHASE NORTH
CONDOMINIUM #2 ASSOCIATION, INC.,

Petitioner,

v. Fees Case No. 00-0788
Rel. Case No. 99-2242

JANINE M. YOUNG,

Respondent.
_____/

ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DENYING MOTION FOR REHEARING

On November 15, 1999, the petitioner, Cypress Chase North Condominium #2 Association, Inc., filed a petition for arbitration in underlying arbitration case number 99-2242 naming Janine M. Young as respondent. On November 11, 1999, the arbitrator entered an order requiring the respondent to file an answer within twenty days of receipt of the order. On February 8, 2000, the petitioner was ordered to file proof of service. On February 14, 2000, the petitioner filed a document purporting to show that the respondent had been served on January 15, 2000. Therefore, the respondent should have filed an answer on or before February 4, 2000. On February 16, 2000, a default was entered against the respondent for failure to file an answer to the petition. On March 27, 2000, a final order on default was entered.

On April 27, 2000, the respondent filed a motion for attorney's fees; this motion was assigned arbitration case number 00-0788. On May 18, 2000, the fee motion was granted.

On June 12, 2000, the petitioner filed a letter in which she states that she does not owe the petitioner any fines or fees because the association's attorney had been notified on several occasions to close the case against her. The letter will be treated as a motion to set aside default and for rehearing. The letter provides that the respondent, Ms. Young, "only received a letter from the attorneys. Miss Young also did not receive any further letters, as she was in Spain studying and upon her return, March 27, 2000, received all the subsequent letters and the fall out." A letter from the association to its counsel signed by Honora Bender, Secretary, and dated April 5, 2000 was attached to the respondent's motion. The letter provides as follows:

> Please do not have the arbitrator issue any further action in the above matter because Miss Young has removed the dog from the premises.
>
> This was done after receipt of the first notice.

On June 13, 2000, the petitioner was order to respond to the letter. On September 21, 2000, the petitioner filed a notice of filing affidavit of Honora Bender. The petitioner requests that the arbitrator disregard the April 5, 2000 letter because the letter was sent in error and attached in support thereof a sworn affidavit signed by Honora Bender. The petitioner further states that the letter was sent more than five months after the date of the original filing of the petition for arbitration and that the violation continued after the filing of the petition.

A party seeking to set aside a default judgment must demonstrate that 1) the failure to file a responsive pleading was the result of mistake, inadvertence, surprise or excusable neglect; 2) the party had a meritorious defense; and 3) the party has been reasonably diligent in seeking to vacate the default after it was discovered. Hunt Extermination Co. Inc. v. Crum, 598 So. 2d 113 (Fla. 2nd DCA 1992). Because all three of the requirements listed above must be demonstrated in order to set

aside a default judgment, the motion must be denied. The respondent admits receiving the correspondence in this case upon her returned from Spain on March 27, 2000, which incidentally is also the date on which the final order on default was issued. Assuming arguendo that the respondent's being out of the country for a period of time during this case satisfies the first prong of the test, the fact that the respondent failed to file any pleading in this matter until June 12, 2000, more than three months after issuance of the final order on default, and also three months after being apprised of the proceeding, shows an absence of reasonable diligence in seeking to vacate the default. As to the remaining prong of the test outlined in Crum, whether the respondent has asserted a meritorious defense, the respondent has failed to meet that burden. The respondent's assertion that the dog was visiting does not constitute a meritorious defense. Article XVI, Section F of the declaration does not make a distinction between visiting and live-in pets; it prohibits a unit owner from permitting her unit from being "occupied at any time by any pets or animals." Therefore, the pet's status as a visitor is irrelevant and does not constitute a meritorious defense. Therefore, the motion to set aside the final order on default in case number 99-2242 is DENIED.

The respondent appears to also seek a motion for rehearing of the final order on attorney's fees in case number 00-0788, entered on May 18, 2000. A motion for rehearing may be filed within 15 days after the date of entry of the final order. Rule 61B-45.044(1), Florida Administrative Code. The respondent's letter was filed on June 12, 2000, which was more than 15 days after entry of the final order and is, therefore, untimely. Consequently, the motion for rehearing is DENIED.

Finally, the respondent's assertion that the petitioner's counsel continued to prosecute the case after being instructed to "not have the arbitrator issue any further action" does not constitutes grounds to either set aside the default or grant a motion for rehearing. The petitioner has stated in

a sworn affidavit that the letter was sent in error, which is consistent with the actions taken by counsel; therefore, neither the final order on default nor the final order on attorney's fees will be disturbed.

It is therefore, ORDERED:

1. The motion to set aside default is DENIED.

2. The motion for rehearing is DENIED

3. The respondent shall comply with the final order on default issued in arbitration case number 99-2242 on March 27, 2000.

4. The respondent shall comply with the final order on attorney's fees issued in arbitration case number 00-0788 on May 18, 2000.

DONE AND ORDERED this 28th day of September 2000, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Copies furnished to:

Guy M. Shir, Esquire
Becker & Poliakoff, P.A.
500 Australian Avenue S, Ninth Floor
West Palm Beach, FL 33401
Attorney for petitioner

Janine M. Young

3301 NW 47th Terrace, Unit 208
Lauderdale Lakes, FL 33319
Respondent

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

IN RE: PETITION FOR ARBITRATION

4000 ISLAND BOULEVARD
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

Fee Case No. 00-0859
Related Case 99-1038

SELMA MILGRIM DeBEER and
DAVID DeBEER,

Respondents.
_____/

FINAL ORDER ON MOTION FOR FEES AND COSTS

Petitioner filed a motion for costs and attorney's fees on May 8, 2000, seeking recovery of $3,445. On May 10, 2000, the undersigned arbitrator entered an order permitting the respondents to file a response to the motion within 20 days. Respondents filed no response.

The instant fees case arose out of the underlying arbitration case number 99-1038, in which the petition for arbitration, filed on May 17, 1999, sought removal of respondents' greyhound dog, which was in violation of a provision in the declaration of condominium which allowed only dogs weighing less than 25 pounds. The petition also sought an order requiring respondents to furnish a key to the unit, as provided by the declaration and rules and regulations. The arbitrator entered a final order on March

31, 2000, granting the relief requested. Since the petitioner achieved the result it sought, it is the prevailing party in the dispute, and is entitled to recover costs and attorney's fees pursuant to Section 718.1255(4)(k), Florida Statutes.

The petitioner was represented by two attorneys, Helio De La Torre, Esq., who has been practicing law for 17 years, and Laura Manning, Esq., who has been practicing for less than five years. The hourly rates billed are $190 per hour for the services of Mr. De La Torre and $150 for the services of Ms. Manning. The rates sought are reasonable and do not exceed those awarded for services of attorneys with similar experience in the Coral Gables area.

Upon an examination of the affidavit attached to the motion for fees, the arbitrator makes the following adjustments in determining the award:

The charges totaling 1.5 hours described as incurred on March 25, 1999, through April 30, 1999, relate to the period prior to the preparation of the petition for arbitration and are disallowed as not incurred in the arbitration proceeding. See, Seascape Club Condo. Assn., Inc. v. Frankel, et al., Arb. Case No. 99-0597, Final Order on Motion for Attorney's Fees (April 27, 1999) (fees not awarded for activities undertaken prior to the drafting and filing of the petition for arbitration).

The affidavit describes charges which reflect that substantially the same activity was performed by both attorneys, resulting in inadvertent double billing. In each of these instances, only the first charge will be allowed. Thus, the charge for .25 hours for review of the respondents' answer and motion to strike by Mr. De La Torre on June

17, 1999, will be allowed, but not the charges totaling .50 hours for the same activity incurred on July 1, 1999, by Ms. Manning. The charge of .25 hours for review of the order denying motion for stay by Ms. Manning on February 9, 2000, is allowed, but not a charge for .25 hours for substantially the same activity on February 15, 2000, by Mr. De La Torre.

The motion for fees reflects that counsel for petitioner expended 3.75 hours on January 24 and 25, 2000, to file a motion to stay the arbitration proceedings while the petitioner filed a complaint for a temporary injunction in circuit court, and for preparation of the proposed circuit court complaint, which was attached to the motion. The arbitrator denied the motion for stay because the basis for the motion, that the dog allegedly twice got loose in the hallway, with the most recent occasion being in October 1999, did not satisfy the criteria for issuance of a temporary injunction.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The arbitrator must determine the amount of time reasonably expended in the arbitration case, which may not necessarily be the number of hours stated by counsel in their motion for fees. See, Ocean Riviera Assn., Inc. v. Mahayni, Arb. Case No. 94-0102F, Final Order (May 13, 1994). In the present case, the motion for stay was without any merit and did not significantly advance petitioner's case. Consequently, the charge for 3.75 hours is disallowed.

The charges incurred on March 31 and thereafter, totaling 1.75 hours, for

review of the final order and preparation of the motion for fees and costs are excessive; one hour will be awarded.

Taking into account the above-described deductions, the association is awarded the remaining 2.75 hours at $190 hourly and 12 hours at $150 hourly for a total fee award of $2,322.50.

The charge for the $50 arbitration filing fee is a reasonable cost and will be awarded. The total award of fees and costs to the association is $2,372.50.

Wherefore it is ORDERED:

Selma Milgrim DeBeer and David DeBeer shall pay $2,372.50 to 4000 Island Boulevard Condominium Association, Inc. within 30 days of the mailing of this final order.

DONE AND ORDERED this 30th day of June, 2000, at Tallahassee, Leon County, Florida.

_____

Tyler Powell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry of the order, a complaint for a trial *de novo* with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 30th day of June, 2000, to:

Laura M. Manning, Esq.
Siegfried, Rivera Lerner,
De La Torre & Sobel, P.A.
201 Alhambra Cir., Ste. 1102
Coral Gables, FL 33134
Petitioner's attorney

Frank Freeman, Esq.
11645 Biscayne Blvd., Ste. 210
Miami, FL 33181
Respondents' attorney

_____
Tyler Powell, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Island Sun Condominium Association, Inc.,

Petitioner,

v. **Fee Case No. 00-0876**
Rel. Case No. 99-1070

Fred Olsen and Patricia Olsen,

Respondents.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Fred and Patricia Olsen filed their request for costs and attorney's fees on May 11, 2000. They seek reimbursement of attorney's fees in the amount of $6,968.50, and $297.19 in costs. The association filed its response on June 2, 2000. The association does not dispute reasonableness of the hourly rate paid to the Olsen's attorney, but disputes the reasonableness of the total fees generated. The association indicates that it paid its attorney only $3,365.00.

This dispute began when the association filed its petition in arbitration case no. 99-1070, seeking entry of an order requiring respondents to remove their light bulb from a limited common element storage room. A final order was entered in that proceeding

on March 29, 2000. The final order found that the Olsens had not violated the rule of the association, and that the policy of the board in requiring removal of the 40-watt bulb but not addressing other potentially larger sources of common element usage of electricity was arbitrary. The association was awarded no relief in the final order.

Section 718.1255, F.S., provides that the prevailing party is entitled to have the other party pay its reasonable costs and attorney's fees. A party prevails if it succeeds in obtaining the relief sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla 1992). The Olsens prevailed in the underlying action; the association was awarded no relief and the Olsens successfully defended the case. Therefore, the Olsens are the prevailing party and are entitled to have the association pay their reasonable costs and attorney's fees. The parties further do not disagree that $175.00 is a reasonable hourly rate considering the experience of counsel and the rates charged by attorneys with similar qualifications in the community in which the condominium is located.

In determining the reasonableness of the fees claimed, the arbitrator has reviewed the activity sheets of counsel. The Olsens' attorney spent 40.10 hours defending the case. The sum of 4.0 hours was spent on activities related to the filing of the answer in the underlying case. The answer, while fully adequate, is not lengthy, and raises no affirmative defenses that required extensive research or preparation. The arbitrator finds that 3.0 hours is a reasonable time for the preparation and filing of the answer. Similarly, responding to the request of the arbitrator for supplemental information

generated 4.6 hours of work. This activity was arguably more complex that preparation of the answer, and required that respondents submit all examples of selective enforcement relied upon. The sum of 4.0 hours is a reasonable amount of time to have spent on this activity. The sum of 5.0 hours spent preparing for and attending mediation is not unreasonable. Counsel spent 8.5 hours preparing for the final hearing. The Olsens called only two witnesses, Mr. Olsen and the president; preparation time exceeds reasonable allowances, and the 8.5 hours is reduced to 4.0 hours. The final category of major activities is preparation of the post-hearing memorandum of law, upon which counsel spent 4.1 hours. This amount is found to be reasonable.

Several of the individual entries require adjustment. The entries dated September 30 and October 1 in the collective amount of 1.0 hour, for the drafting of a motion to take discovery, are disallowed. The arbitrator denied the motion, finding that there was no need shown for discovery, and that the motion, filed shortly after the parties had been ordered to attend mediation, was inappropriate. In addition, the .60 hour claimed for April 3, 2000, for discussing the case with reporters, is denied.

With the exceptions noted above, the activities undertaken by counsel are found to be reasonable and necessary for the defense of this action. Deducting from 40.10 hours the sum of 7.7 hours leaves 32.4 hours billed at $175.00 per hour, or a total fees award of $5,670.00.

The Olsens claim $297.19 in costs. One recoverable component of costs is the $272.25 paid by the Olsens to the mediator. The parties attended mediation at the

direction of the arbitrator, and this cost is awarded. The remainder of the costs claimed are ordinary office expenses and are not recoverable costs under the Statewide Uniform Guidelines for the Taxation of Costs in Civil Actions.

WHEREFORE, based on the foregoing, the Olsens are awarded $5,670.00 in attorney's fees and $272.25 in costs, for a total award of $5,942.25. This amount shall be paid by the association to the Olsens within 30 days of the date of this order.

DONE AND ORDERED this 28th day of August, 2000, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 28th day of August, 2000: C. Scott Brainard, Esquire, 100 2nd Avenue South, Suite 701, St. Petersburg, Florida 33701, and to Peter T. Hofstra, Esquire, DeLoach & Hofstra, P.A., 8640 Seminole Boulevard, Seminole, Florida 33772.

_____

Karl M. Scheuerman, Arbitrator

Right of Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

COLONIAL CLUB CONDOMINIUM
ASSOCIATION, SECTION I, INC.,

Petitioner,

v.

Fee Case No. 00-0913
Related Case 99-0147

FLORENCE HIMMER GRUNBERG,

Respondent.
_____/

FINAL ORDER ON MOTION FOR COSTS AND ATTORNEY'S FEES

Respondent filed a motion for costs and attorney's fees on May 16, 2000, seeking recovery of $18,700.24. Petitioner filed a response to the motion, acknowledging that respondent prevailed in the underlying case, wherein petitioner had sought removal of a washer and dryer from two units owned by respondent. Petitioner argues, however, that the fees sought by respondent are excessive and should be substantially reduced.

The motion filed by respondent's counsel reflects that he billed his client at an hourly rate of $185. He states that he has been admitted to the Florida bar since November 1982, that the underlying proceeding was his first arbitration proceeding before the Department of Business and Professional Regulation, and that he has significant experience in condominium law, including involvement in the drafting of two declarations of condominium. He further states that he has represented both condominium associations and unit owners in other disputes. Based upon these facts, the undersigned deems that fees should be awarded at $175 per hour, a rate more appropriate

to the level of experience of this attorney and to the complexity of the case. See Barenscheer, et al. v. Marina Tower Condo. Assn., Inc., Arb. Case No. 99-0559, Final Order on Motion for Attorney's Fees (April 26, 1999) (In dispute involving whether a unit-owner vote was required for placing a telecommunications tower on the building, hourly fee of $175 awarded where counsel had been practicing for 20 years and had gained considerable experience in community association representation).

Reimbursement for charges for attorney services incurred on January 22, 1999, through February 2, 1999, totaling 1.8 hours, all of which were prior to receipt of the order requiring answer on February 5, 1999, are disallowed. In an arbitration proceeding where the respondent prevails, only fees incurred beginning with preparation of the answer are considered incurred in the arbitration proceeding.

Respondent seeks reimbursement for charges incurred on February 5, regarding a letter from the "South Florida Field Office" and charges on March 11, and March 23, 1999, relating to communications with Kwamena Goodin of the Bureau of Condominiums. Since these charges, totaling .6 hours, were not incurred in the arbitration proceeding and do not involve documents filed in connection with this proceeding, the charges are disallowed.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The arbitrator must determine the amount of time reasonably expended in the arbitration case, which may not necessarily be the number of hours stated by counsel in a motion for fees. See, Ocean Riviera Assn., Inc. v. Mahayni, Arb. Case No. 94-0102F, Final Order (May 13, 1994). In the present case, the charges incurred on February 5, 22, 23, 24, and 25, 1999, for review of the order requiring answer and preparation and filing of

the answer, totaling 4.4 hours are excessive and are reduced to 4 hours. Charges incurred on October 21-22 and 26, 1999, for preparation of a motion to strike petitioner's claim that the units cannot maintain the structural force of a washer an dryer, totaling six hours, are excessive and are reduced to four hours.

Charges totaling 33.2 hours were billed for preparation for and attendance at hearing, including subpoenaing, interviewing and communicating with witnesses and client, incurred on October 26, 29, 31, November 1, 3, 4, 5-6, 8 and 9, 1999, are excessive. Most notably, these charges include two hours for "inspection and running of washers and dryers" on November 4, 1999. Sixteen hours is deemed reasonable for preparing for and attending the one-day hearing and is awarded. Fourteen hours were billed for review of the final hearing tapes and preparation of the memorandum of law. Eight hours is reasonable and is awarded. The primary reason for the reductions made in this paragraph is that the issue in the underlying case was whether the association could enforce its condominium documents, as recorded in the county records, to require removal of the appliances. Respondent spent much preparation, hearing and memorandum time discussing what the respondent might have been told by a realtor and the possible motivation of the association for enforcing its documents against respondent, possibly relating to a disagreement over a purchase deposit for a unit not involved in this proceeding. These were all matters without substantial materiality herein and not necessitating such expenditure of attorney time.

A charge of .5 hours incurred on October 26, 1999, for assembly, faxing, mailing and Fedexing pleadings is disallowed. These are clerical tasks not requiring attorney time. Counsel for respondent billed two hours for review of the final order and preparation of the motion for fees on April 6, May 12 and 15, 2000. One hour is appropriate and is awarded.

Based upon the above analysis, out of 100.6 hours claimed, 71.6 are awarded at $175 hourly, for a total fee award of $12,530.

Costs totaling $89.24 for service of subpoenas and witness fees for three witnesses who appeared at the hearing are appropriate and are awarded. The total award is $12,619.24.

Based upon the foregoing, it is ORDERED and ADJUDGED:

Colonial Club Condominium Association Section I, Inc., shall pay $12,619.24 to Florence Himmer Grunberg within 30 days of the mailing of this final order.

DONE AND ORDERED this 31st day of August, 2000, at Tallahassee, Leon County, Florida.

_____

Tyler Powell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO APPEAL

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial *de novo* with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 31st day of August, 2000, to:

GUY M. SHIR, ESQ.
BECKER & POLIAKOFF PA
500 AUSTRALIAN AVE S 9TH FL
WEST PALM BEACH FL 33401
PETITIONER'S ATTORNEY

KEVIN M. LAMONTAGNE, ESQ.
125 E BOYNTON BEACH BLVD
BOYNTON BEACH FL 33435
RESPONDENT'S ATTORNEY

_____
Tyler Powell, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

FIVE TOWNS OF ST. PETERSBURG,
NO. 300, INC.,

Petitioner,

v.

Fee Case No. 00-0994
Related Case 00-0694

TONY NICOLOV,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

The petitioner has filed a motion seeking recovery of attorney's fees and costs totaling $623.50 arising from the underlying case 00-0694. The underlying petition, filed on April 17, 2000, sought as relief an order requiring the respondent to comply with the condominium documents regarding nuisance relating to his dog and regarding dog walking. The petition in the underlying case was dismissed as moot in a final order entered May 10, 2000, because the petitioner had filed a notice on May 8, 2000, stating that dog had been permanently removed from the unit.

The motion for fees and costs, filed June 1, 2000, asserts that “the respondent voluntarily complied with the demand made by the petitioner in the petition for mandatory non-binding arbitration. Therefore, the petitioner is the prevailing party."

Because the respondent's response to the fees motion was ambiguous, the undersigned entered an order requiring clarification, which directed, in part, that the respondent provide the date when the dog was permanently removed from the unit. The response to that order reflects that the dog was permanently removed on April 17, 2000. Thereafter, the petitioner filed a log kept by a unit owner, which counsel for petitioner describes as reflecting that, "as late as April 14, the animal in question remained at the association."

A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992)(citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). There need not be a determination on the merits for purposes of a fee award, if the applicable statutory provision provides for fees to a prevailing party. State Department of Health and Rehabilitative Services v. Hall, 409 So. 2d 193 (Fla. 3d DCA 1982). This proposition applies when a case becomes moot because the opposing party voluntarily provides the relief sought in the action. See 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 364, 367 (Fla. 2d DCA 1984).

In West Wind Estates Condominium Association, Inc. v. Becker, Arb. Case No. 94-0301F, Order on Motion for Attorney's Fees (Aug. 15, 1995), the arbitrator set forth the appropriate test for determining the prevailing party where the arbitration petition is dismissed as moot:

> A party can be considered a "prevailing party", even though the case is moot, when (1) it has obtained the relief it sought in the arbitration or lawsuit; (2) the petition for arbitration or lawsuit was the catalyst that motivated the opposing party to take the action causing the case to become moot; and (3) the action taken by the opposing party was required by law. (Emphasis added).

The arbitration file reflects that the petition and order requiring answer were served at the respondent's address on April 24, 2000. Since the facts presented by both parties reflect that the dog was not in the unit after April 17, 2000, the dog could not have been removed as a result of the petition for arbitration, since the petition, received by the division on April 17, 2000, was not served at the respondent's residence until April 24, 2000, by which time the dog was already gone. Although the removal of the dog accomplished the purpose sought in the arbitration, in order to satisfy the second prong of the test outlined above the petitioner must show that the petition was the catalyst that motivated the respondent to comply with the relief sought. Because the dog was removed before the respondent received the petition for arbitration, the relief asked by the petitioner was not obtained as a result of the petition for arbitration or during the pendency of the arbitration case; consequently, the petitioner is not deemed the prevailing party and is not entitled to prevailing party attorney's fees. See Cypress Chase Condo. #2 Assn., Inc. v. Urbano, Arb. Case No. 00-0325, Final Order on Motion for Attorney's Fees (March 14, 2000) (where complained-of dog was removed before respondent came under the jurisdiction of this tribunal by receipt of the petition for arbitration and order requiring answer, the

relief asked by petitioner was not obtained during the pendency of the arbitration case and petitioner was not entitled to prevailing party attorney's fees); Horizons West Condo. Number 3 Assn., Inc. v. Penaranda, Arb. Case No. 94-0065F, Final Order Denying Motion (March 22, 1994) (filing of petition could not have been motivating factor because violations were cured prior to respondents being served with a copy of the petition, and accordingly association was not prevailing party; no fees awarded.)

Based upon the foregoing, it is ORDERED and ADJUDGED:

Petitioner's motion for recovery of costs and fees is DENIED.

DONE AND ORDERED this 6th day of November, 2000, Tallahassee, Leon County, Florida.

_____

Tyler Powell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry of the order, a complaint for a trial *de novo* with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by

U.S. mail, postage prepaid, this 6th day of November, 2000, to:

JAMES R DE FURIO ESQ
BECKER AND POLIAKOFF P A
401 E JACKSON ST STE 2400
TAMPA FL 33602
Attorney for petitioner/association

TONY NICOLOV
5530 80TH ST N APT A305
SAINT PETERSBURG FL 33709
Respondent/unit owner

_____
Tyler Powell, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

HEATHER HILL MASTER CONDOMINIUM ASSOCIATION, INC. a/k/a HEATHER HILL MASTER ASSOCIATION INC.,

Petitioner,

v.

Fees Case No. 00-1064
Rel. Case No. 00-0110

EUNICE FREEMAN,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On June 14, 2000, Heather Hill Master Condominium Association, Inc. moved for an award of $742.50 in attorney's fees and $50 in costs. The fee request relates to underlying arbitration case number 00-0110. An order permitting response to the motion for fees was issued on June 16, 2000. On July 7, 2000, the respondent filed a response to the motion.

Pursuant to Section 718.1255(4)(k), Florida Statutes (1999), the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). In the underlying dispute filed on January 18, 2000, the petitioner asserted that the respondent was maintaining a cat in her unit in violation of the declaration of condominium. As

relief, the petitioner requested an order requiring removal of the cat. On March 27, 2000, the respondent filed an answer in which she stated that the cat was removed on February 28, 2000. On March 29, 2000, an order to show cause why the petition should not be dismissed as moot was directed to the petitioner; the petitioner did not file a response. The petition was dismissed as moot on May 3, 2000. The benefit sought by the petitioner in initiating this case was achieved; thus, the petitioner is the prevailing party.

James R. De Furio, Esquire, charged the association $160 per hour for his legal services. Counsel has experience in the area of condominium law and practices in the Tampa area. The requested hourly rate does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, fees will be awarded at the requested rate of $160 per hour.

The petitioner requests compensation for 4.5 hours of legal services. The respondent questions the following entries. First, the February 1, 2000, .2 hour entry re: "Preparation of notice of filing; Review and analysis of correspondence from opposing counsel" is denied because, at that date, the respondent had not retained counsel. Second, the February 1, 2000, .1 hour entry re: "Receipt and review of correspondence from Tarel regarding his position of voting" is denied because the entry does not appear to relate to the present dispute. Finally, the February 9, 2000, .2 hour entry re: "Accumulate and compile recorded documents in compliance with Arbitrator's Directive of 2-8-00" and the February 11, 2000, .3 hour entry re: "Preparation of Notice of filing; Assemble documents regarding same; instruction to staff; update document search of public record" are denied because the activities were required due to the petitioner's filing incorrect condominium documents with the petition. The remaining entries, totaling 3.7 hours, listed on the billing statement

reflect reasonable expenditures of time to successfully prosecute this case and will be awarded. The association also seeks $50 to compensate it for the cost of the arbitration filing fee. The filing fee is recoverable and will be awarded. The petitioner shall be awarded $592 in attorney's fees and $50 in costs, bringing the total amount awarded to $642.

It is therefore ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. The respondent, Eunice Freeman, shall pay the sum of $642 to the petitioner, Heather Hill Master Condominium Association, Inc., within thirty days of the date of this order.

DONE AND ORDERED this 21st day of August 2000, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to James R. De Furio, Esquire, Becker & Poliakoff, P.A., 401 E. Jackson Street, Suite 2400, Tampa, FL 33602 and Eunice Freeman, 866 DeSoto Court, Dunedin, FL 34698, this 21st day of August 2000.

_____

Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE HIGHLANDS AT KENDALE LAKES
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

Fee Case No. 00-1066
Related Case 00-0070

CARLOS PRIM,

Respondent.
_____/

FINAL ORDER ON MOTION FOR FEES AND COSTS

Petitioner filed a motion for costs and attorney's fees on June 14, 2000, seeking recovery of $1,242. On June 16, 2000, the undersigned arbitrator entered an order permitting the respondent to file a response to the motion within 20 days. Respondent filed no response.

The instant fees case arose out of the underlying arbitration case number 00-0070, in which the petition for arbitration was filed on January 10, 2000. The petition requested as relief an order requiring the respondent to remove all but one of his dogs from his unit, with the remaining dog weighing less than 25 pounds, and requiring the respondent to manage the remaining dog so it does not excessively howl, bark or make noise.

The arbitrator entered a final order after default on June 7, 2000, granting the

relief requested. Since the petitioner achieved the result it sought, it is the prevailing party in the dispute, and is entitled to recover costs and attorney's fees pursuant to Section 718.1255(4)(k), Florida Statutes.

The petitioner was represented by Brian W. Pariser, Esq., who has been practicing law in Florida since 1974. The hourly rate billed is $175 per hour. The rate sought is reasonable and does not exceed that awarded for services of attorneys with similar experience in the Miami area.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The arbitrator must determine the amount of time reasonably expended in the arbitration case, which may not necessarily be the number of hours stated by counsel in a motion for fees. See, Ocean Riviera Assn., Inc. v. Mahayni, Arb. Case No. 94-0102F, Final Order (May 13, 1994). In the present case, the charge for three hours to prepare the petition for arbitration is excessive, considering the lack of complexity of the issues presented; two hours is appropriate and will be allowed.

The association is awarded the remaining 5.3 hours sought at $175 hourly for a total fee award of $927.50.

The charge of $50 for the arbitration filing fee and $25 for service of process, after the certified mailing of the order requiring answer was returned unclaimed, are reasonable costs and will be awarded. A charge of $39.50 for photocopies is disallowed. This is a nonrecoverable ordinary office expense. A charge of $25 for

abstracting costs is disallowed where there was no showing that this expense was necessary for the prosecution of this action. The total award of fees and costs to the association is $1,002.50.

Wherefore it is ORDERED:

Carlos Prim shall pay $1,002.50 to The Highlands at Kendale Lakes Condominium Association, Inc., within 30 days of the mailing of this final order.

DONE AND ORDERED this 28th day of July, 2000, at Tallahassee, Leon County, Florida.

_____

Tyler Powell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry of the order, a complaint for a trial *de novo* with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 28th day of July, 2000, to:

BRIAN W. PARISER ESQ
DATRAN II STE 1511
9130 S DADELAND BLVD
MIAMI FL 33156
Attorney for petitioner/association

CARLOS PRIM
7415 SW 153RD CT APT 106
MIAMI FL 33193
Respondent

_____
Tyler Powell, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

BENT TREE VILLAS EAST CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

Fees Case No. 00-1086
Rel. Case No. 99-2393

MARIA DOLAN,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES AND COSTS

On June 16, 2000, the petitioner, Bent Tree Villas East Condominium Association, Inc., moved for an award of $8,194.01 in attorney's fees and costs. The fee request relates to underlying arbitration case number 99-2393. On June 20, 2000, an order permitting response was issued, allowing the respondent to respond to the petitioner's motion. As of the date of entry of this order, the respondent has not filed a response to the motion for attorney's fees and costs.

In the underlying dispute, which was filed on December 16, 1999, the association alleged that the respondent brought a dog and a bird onto the association property, failed to pick up after the dog, allowed overnight parking of vehicle(s) at the clubhouse without a current license tag and inspection certificate, and allowed the parking of vehicle(s) in her driveway without a permit, all in violation of the condominium documents. After the filing of the petition and prior to entry of the final order, all of the issues unrelated to the removal of the dog had become moot. On May 10, 2000, a

Summary Final Order was issued in which the respondent was ordered to permanently remove the pet dog from the unit. The benefit sought by the petitioner in initiating this case was achieved; thus, the petitioner is the prevailing party.

Pursuant to Section 718.1255(4)(k), Florida Statutes (1997), the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). There need not be a determination on the merits for purposes of a fee award, if the applicable statutory provision provides for fees to a prevailing party. State Department of Health and Rehabilitative Services v. Hall, 409 So. 2d 193 (Fla. 3d DCA 1982). This proposition applies when a case becomes moot because the opposing party voluntarily provides the relief sought in the action. See 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 364, 367 (Fla. 2d DCA 1984).

Michael Gelfand, Esquire, charged the association $150.00 per hour for his legal services. Counsel has been licensed to practice law in the State of Florida since 1982 and has substantial experience in the area of condominium law. The rate of $150.00 per hour does not exceed the rate customarily charged in similar cases for attorneys with similar experience. Gaila Anderson, Esquire, charged the association $135.00 per hour for some of her legal services and $150.00 for the remainder. Ms. Anderson has been licensed to practice law in the State of Florida since 1995 and practices in West Palm Beach. These rates do not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience. Therefore,

the petitioner will be compensated at the requested hourly rates for Ms. Anderson's legal services.

The association requests attorney's fees for 1.7 hours for activities performed by Mr. Gelfand. The entry dated 12/22/99 for .3 hour re: "Assistance in completing amended petition" is denied because the activity was required due to the inadequacy of the initial petition. Therefore, the association is awarded attorney's fees for 1.4 hours at the rate of $150.00 per hour, totaling $210.00, for Mr. Gelfand's legal services.

The association requests attorney's fees for 54.5 hours for activities performed by Ms. Anderson. The entries listed on the petitioner's billing statement predating 12/8/99, totaling .4 hour at the rate of $135 per hour, are denied because they all occurred prior to the drafting and filing of the petition for arbitration. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable).

The entries dated between 12/8/99 and 12/15/99, totaling 8.2 hours at the rate of $135 per hour, are related to the drafting of the petition. The case presented in the petition was not complex factually or legally; therefore, 8.2 hours for the preparation and filing of an adequate petition is excessive. This amount is reduced to 4 hours.

The entry dated 12/21/99 for 1.2 hours at the rate of $135 per hour is denied because the activities were required due to the inadequacy of the initial petition.

The last entries requiring adjustment relate to the motion for attorney's fees and costs are as follows: 6/2/00 .9 hour, 6/5/00 .5 hour, 6/14/00 2.1 hours, and 6/15/00 .4 hour. These entries total 3.9 hours for drafting, reviewing and revising the motion for attorney's fees, affidavit of costs,

affidavit of fees with additions, and correspondence to arbitrator regarding same. The motion for fees comprises of 3 pages and the affidavits are routine and uncomplicated. Prevailing parties are typically awarded 1.0 hours for the preparation and filing of their motions for attorney's fees in these arbitration proceedings, and petitioner in this case has shown no rationale for departing from this figure. Therefore, the petitioner will be awarded 1 hour at the rate of $150 per hour for these activities.

The remaining entries on the billing statement reflect reasonable expenditures of time to litigate this case and will be awarded. Thus, the petitioner is awarded $ 6,355.50 in attorney's fees for Ms. Anderson's legal services.

In addition, the petitioner requests compensation for the $50.00 filing fee, $25.00 for service of process, $60.76 for express mail costs, and $4.75 for photocopy charges of exhibits attached to petition. The filing fee, the expense for service of process, and the charge for photocopying documents filed with the arbitrator are recoverable costs. See Statewide Uniform Guidelines for the Taxation of Costs in Civil Actions. Therefore, the petitioner is awarded $79.75 in costs.

Wherefore, the petitioner is awarded $6,645.25 in attorney's fees and cost ($210.00 for Mr. Gelfand's legal services, $6,355.50 for Ms. Anderson's legal services, and $79.75 in costs).

It is therefore ORDERED:

1. The petitioner's motion for attorney's fees and costs is GRANTED in part.

2. The respondent, Maria Dolan, shall pay the sum of $6,645.25 to the petitioner, Bent Tree Villas East Condominium Association, Inc., within thirty days of the date of this order.

DONE AND ORDERED this 6th day of September 2000, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Gaila M. Anderson, Esquire, Gelfand & Arpe, P.A., One Clearlake Centre, 250 S. Australian Avenue, Suite 1010, West Palm Beach, FL 33401-5014, and Maria Dolan, 9855-B Tabebuia Tree Drive, Boynton Beach, FL 33436, this 6th day of September 2000.

_____

Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Gulfside Village Condominium Association, Inc.,

Petitioner,

v. **Fee Case No. 00-1276**
Rel. Case No. 00-0283

Gator Entertainment, Inc., d/b/a Blockbuster Video,

Respondent.
_____/

FINAL ORDER DENYING REHEARING

Comes now, the undersigned arbitrator, and enters this final order as follows:

A final order was entered in this fees proceeding on July 27, 2000. The order determined that the motion for fees was untimely filed due to the fact that the envelop containing the motion bore the incorrect zip code, thereby causing a delay. But for the zip code error, in all likelihood the motion would have arrived within the 45 day period provided by rule. However, having researched past final orders, it appears that the 45 day period has been adhered to without exception regardless of the circumstances, and that it has been treated as being jurisdictional in nature. There has been demonstrated no basis upon which to reverse the final order denying the motion as untimely.

Accordingly, the motion for rehearing is denied.

DONE AND ORDERED this 14th day of August, 2000, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of this final order has been sent by U.S. Mail on this 14th day of August, to the following persons: David H Rogel, Esquire, Becker & Poliakoff, P.A., , 5201 Blue Lagoon Drive, Suite 100, Miami, Florida 33126, and to Gator Enterprises, Inc., c/o Shane Peterson, 99625 Overseas Highway, Key Largo, Florida 33037.

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the date of entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

MILLER VILLAS CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v.

Fees Case No. 00-1277
Rel. Case No. 99-1545

KAY A. LICHTENSTEIN,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES AND COSTS

On July 12, 2000, the petitioner, Miller Villas Condominium Association, Inc., moved for an award of $3,902.50 in attorney's fees and costs. On August 17, 2000, the respondent filed a response to the motion.

The fee request relates to underlying arbitration case number 99-1545, which was filed on July 26, 1999. In the underlying petition, the association alleged that the unit owner had removed a tree, installed four stepping stones, planted plants and surrounded them with a cement border, and installed an iron railing in an unapproved location. The unit owner was ordered to replace the tree, remove the stepping stones and remove the iron railing from the unapproved location. As to the flowerbed and its cement border, the association's property manager testified at the final hearing that the flowerbed in its present state was permissible; therefore, this count was dismissed.

Pursuant to Section 718.1255(4)(k), Florida Statutes (1997), the prevailing party in an

arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Because the association obtained the relief requested on three of the four issues, the association is the prevailing party as to those three issues.

Helio De La Torre, Esquire, charged the association $190.00 per hour for his legal services. Mr. De La Torre has been licensed to practice law in the State of Florida since 1980 and much of his experience is in the area of condominium law. He also practices in Coral Gables. The requested rate does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience. Therefore, his legal services are compensated at $190.00 per hour. David Israel, Esquire, charged the association $150.00 per hour. Mr. Israel has been licensed to practice law in the State of Florida since 1993 and has experience in the area of condominium law. The requested rate does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, fees are awarded at the requested rate. Laura Manning, Esquire, charged the association $150.00 per hour. Ms. Manning has less than five years experience as an attorney; however, she practices in Coral Gables and has experience in condominium law. The requested rate does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; thus, Ms. Manning's time is compensated at the rate of $150.00 per hour.

The association requests attorney's fees for 23.75 hours. The entry listed on the petitioner's billing statement dated September 13, 1999 for .5 hour at the rate of $150.00 per hour is disallowed

because the petitioner seeks recovery for "Review file to determine response to arbitrator's order of September 17, 1999," which had not yet been issued. The remaining entries on the billing statement reflect reasonable expenditures of time to prosecute this case. However, when there are multiple claims, the unrelated claims should be treated as if they had been raised in separate actions, and no fee may be awarded for services on the unsuccessful claims. Where the petitioner has not provided a breakdown of the number of hours expended on each issue, the arbitrator may reduce the fee awarded on the basis of the amount of time reasonably expended on each issue. See Boettger v. Ocean Palms Condo. Assn., Inc., Arb. Case No. 93-0204F, Final Order Petitioner's Motion for Attorney's Fees (Sept. 17, 1993) (arbitrator deducted 12 hours from the total of 49.2 hours expended by petitioner's counsel where petitioner prevailed on only three of five issues and did not submit detailed time records reflecting the amount of time spent on each claim). In the present case, the billing statement does not break down the amount of time spent on each claim.

It is clear from the record in the underlying case that the association did not prevail on the flowerbed and border issue; therefore, the portion of the association's claim for fees relating to that issue will not be awarded. The total amount requested for fees of $3,852.50 minus the $75 charged for the disallowed entry, equals $3,777.50; this amount is reduced by one-fourth to $2,833.13.

In addition, the petitioner requests compensation for the $50.00 filing fee, which is a recoverable cost and is awarded.

Wherefore, the petitioner is awarded $2,833.13 in attorney's fees and $50.00 in costs, for a total award of $2,883.13

In her response to the motion for attorney's fees, the respondent requests that she be allowed to pay the award in twelve equal monthly installments. After carefully considering the request, the

arbitrator concludes that any negotiations regarding a payment plan should be addressed to the association's counsel.

It is therefore ORDERED:

1. The petitioner's motion for attorney's fees and costs is GRANTED in part.

2. The respondent, Kay A. Lichtenstein, shall pay the sum of $2,883.13 to the petitioner, Miller Villas Condominium Association, Inc., within thirty days of the date of this order.

DONE AND ORDERED this 30th day of August 2000, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to David B. Israel, Esquire, Siegfried Rivera Lerner, De La Torre & Sobel P.A., 201 Alhambra Circle, Suite 1102, Coral Gables, FL 33134 and Laura R. Weinfeld, Esquire, 2200 Suntrust International Center, One Southeast Third Avenue, Miami, FL 33131, this 30th day of August 2000.

_____

Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

PINE ISLAND RIDGE CONDOMINIUM G
ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 00-1281
Rel. Case No. 00-0128

JILL DELGUIDICE,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its fees motion on July 13, 2000, seeking an award of $2,280.00 in attorney's fees. The respondent was given an opportunity to respond to the request for fees but has not done so. The fees request relates to the arbitration proceeding below, in case no. 00-0128. The final order in the case below found that the respondent had violated provisions of the condominium documents by causing noisy disturbances, and by allowing her household members to perform specified actions that were held to constitute nuisances. The respondent was ordered to cease engaging in noisy altercations; to dispose of trash from her unit properly; to permanently remove her children's bicycles from the condominium property; and to control her children as specified in the final order.

Under s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to

recover its reasonable costs and attorney's fees. The association plainly was the prevailing party in the case, having obtained the relief it sought in filing the petition. Therefore, the association is entitled to recover its reasonable costs and fees.

Counsel for the association billed the association at the rate of $200.00 per hour. Counsel has been practicing law in the State of Florida and in the field of condominium law for more than 27 years. This sum is reasonable given counsel's experience overall and in this area of the law, and given the rates customarily charged by other attorneys in the locality for cases such as the present case. Therefore, the sum of $200.00 per hour will be awarded.

The arbitrator has examined the activity sheets of counsel. Activities undertaken in the representation spanned 11.4 hours. All of the entries shown appear to have been reasonable and necessary for the successful prosecution of the case, with the exception of the .2 hour billed on December 16, 1999, before the petitioner commenced preparation of the petition for arbitration. The petitioner is awarded 11.2 hours of its attorney's time.

The association is accordingly awarded $2,240.00 in attorney's fees. Respondent shall pay this amount to the association within 30 days of the date of this order.

DONE AND ORDERED this 25th day of August 2000, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept. of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from

the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to JEROME R SCHECHTER ESQ at 315 S E 7TH ST 1ST FL, FORT LAUDERDALE FL 33301 and to JILL DELGUIDICE at 2911 SW 87 TERR, DAVIE FL 33328 on this the 25th day of August 2000.

_____

Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

JEFFREY OAKES and LYNN OAKES,

Petitioners,

v.

Fee Case No. 00-1461
Rel. Case No. 00-0638

VERA CRUZ CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On August 22, 2000, the respondent filed a motion for attorney's fees in the amount of $9,065.00 for 62 hours of its attorney's time billed at the hourly rates of $150.00 and $200.00 and costs in the amount of $7,861.91, for a grand total of $16,926.91.

The motion pertains to case no. 00-0638, filed on April 4, 2000. The petition alleged that the association failed to permit installation at the petitioners' expense of a stair lift on the common element stairs. The petition stated that the lift was required by petitioner Jeffrey Oakes in order to access his second floor unit. Oakes is confined to a wheel chair and the condominium building does not have an elevator.

Following dismissal of the petitioners' claim for punitive damages, the petitioners filed their notice of voluntary dismissal of the petition for arbitration. On August 3, 2000, the arbitration petition was dismissed, and the petitioners filed a Fair Housing Act complaint in federal court. The undisputed reason that the petitioners withdrew their petition is that they sought

punitive damages, which are generally available in fair housing cases filed in court but not in arbitration. The petitioners argue that an award of attorney's fees is inappropriate. First, they argue the motion is premature; that attorney's fees should be awarded to the association only if it is victorious in the federal court action. Second, they argue that the association cannot be a prevailing party under state and federal law in a claim based on discrimination except in certain rare circumstances.

The petitioners cite a substantial body of law supporting the rule that in civil rights actions a defendant is rarely awarded attorney's fees. See Christianburg Garment Co. v. EEOC, 434 U.S. 412, 98 S. Ct. 694, 54 L. Ed. 2d 648 (1978) (prevailing defendant is to be awarded prevailing party attorney's fees only when the court has found that the plaintiff's action was frivolous, unreasonable, or without foundation); Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980) (the fact that a prisoner's complaint, even when liberally construed, cannot survive a motion to dismiss does not, without more, entitle the defendant to attorney's fees). The arbitrator notes that the attorney's fee provision addressed in Hughes and Christianburg provides "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." See Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. 1988. The federal fair housing act also provides for fee awards in the court's discretion. See 42 U.S.C. 3613(c)(2) ("In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs…") In contrast, the attorney's fee provision applicable in the instant case is a mandatory one. See Section 718.1255(4)(k), Florida Statutes ("The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees

in an amount determined by the arbitrator.") Therefore, if there is a prevailing party, the arbitrator must award attorney's fees to that party.

The petitioners' second point is that the motion is premature. However, prevailing party attorney's fees shall be awarded by the arbitrator following entry of a final order and the filing of a party's request unless a complaint for a trial *de novo* is timely filed in a court of competent jurisdiction. See Section 718.1255(4)(k), Florida Statutes; Rule 61B-45.048(6), Florida Administrative Code. That has not been done in this case. Accordingly, the motion is not premature.

In general, when a petitioner voluntarily dismisses an action, the respondent is the prevailing party. See Stuart Plaza, Ltd. v. Atlantic Coast Development Corp. of Martin County, 493 So. 2d 1136 (Fla. 4th DCA 1983);4 Landmark Oaks Condominium Association, Inc. v. Rice, et al., Arb. Case No. 96-0111F, Final Order on Respondent's Motion for Attorney's Fees and Costs (July 9, 1996). There must be an end to the litigation on the merits so that the court can determine whether the party requesting fees has prevailed. Thornber, et al. v. City of Fort Walton Beach, 568 So. 2d 914 (Fla. 1990) citing Simmons v. Schimmel, 476 So. 2d 1342 (Fla. 3d DCA 1985), review denied, 486 So. 2d 597 (Fla. 1986). In Thornber, the Supreme Court held that where a federal civil rights action filed by a police chief against the city council and council members individually was voluntarily dismissed following a settlement, the city council members were entitled to attorney's fees pursuant to Section 111.07, Florida Statutes, as prevailing

4 An exception to this rule is where the dismissal occurs because the respondent acquiesces to the petitioner's position. See 51 Island Way Condominium Association, Inc. v. Williams, et al., 458 So. 2d 364 (Fla. 2d DCA 1984).

defendants. The court noted that while the chief had obtained some relief, the council members as individuals did not provide any of the relief and the dismissal was with prejudice, thus signaling an end to the litigation. In Simmons, a wrongful death action, the plaintiff had sued the hospital and several doctors. Following discovery, the case was set for trial. Prior to empanelling the jury the plaintiff voluntarily dismissed without prejudice all of the defendants except one, a strategic move on the part of the plaintiff in an attempt to reduce the possibility of jury confusion from multiple defendants. One of the doctors sought and was awarded attorney's fees. The appellate court reversed. Citing Del Valle v. Biltmore II Condominium Association, 411 So. 2d 1356 (Fla. 3d DCA 1982), the court stated that there was no basis to conclude that the doctor had prevailed. The court noted that dismissal was without prejudice to refile the suit, the plaintiff had an expert witness who would have given testimony tending to establish liability on the part of the doctor, and like Del Valle, the plaintiff insisted that the voluntary dismissal was not related to the merits of the case. Compare Vidibor v. Adams, 509 So. 2d 973 (Fla. 5th DCA 1987); Dam v. Heart of Florida Hospital, Inc., 536 So. 2d 1177 (Fla. 2d DCA 1989) (rejecting the third district's view in Simmons).

In the instant case, the petition alleged that petitioner Jeffrey Oakes is confined to a wheel chair, that he requested permission to make modifications to the condominium facilities necessary for his unfettered access to his second-floor unit, and that the board refused permission for the modifications. These facts, admitted by the association, make out a prima facie case of housing discrimination. By order entered July 7, 2000, several of the association's defenses to the petitioners' claim were dismissed, and the petitioners' request for compensatory damages for pain and suffering and emotional distress was stricken. The association's remaining defenses were that

the petitioners had not provided the association with sufficient information regarding the modifications, that the modifications were physically infeasible, and that the modifications would have to be approved by the unit owners. Given the posture of the case, there is no reason to believe that the petitioners' dismissal of their petition was related to the merits of the case. The petitioners took the dismissal in order to pursue their claim in federal court where they could obtain broader remedies. Under the particular facts of this case, it must be determined that the respondent is not the prevailing party.

Based on the foregoing, it is ORDERED:

The respondent's motion for award of attorney's fees is DENIED.

DONE AND ORDERED this 30th day of November 2000, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Brian J. Connelly, Esq., 979 Beachland Blvd., Vero Beach, FL 32963 and Lisa N. Thompson, Esq., Collins, Brown, Caldwell, Barkett & Garavaglia, P.O. Box 3686, Vero Beach, FL 32964 this the 30th day of November 2000.

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Patricia A. Draper, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

CHEVY CHASE CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 00-1525
Rel. Case No. 00-0795

ANAND ACHAIBAR,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

The petitioner has filed a motion seeking recovery of attorney's fees and costs totaling $1045.00 arising from the prosecution of Arb. Case No. 00-0795. The underlying petition sought to require removal of a satellite dish from the condominium's common element exterior wall. A summary final order was entered holding that the respondent had removed the dish and that if holes remained in the wall where the respondent had initially installed the dish, then the respondent must pay up to $50 for repair of the holes. Additional relief requested by the petitioner was denied.

The petitioner now moves for prevailing party attorney's fees. The respondent contests the motion, arguing in pertinent part that the dish was removed "several weeks" before the respondent had actual notice that a petition had been filed and that the petition was unnecessary.

The date of the removal cannot be ascertained from the record, but the order in which events occurred appears to be as follows:

On December 20, 1999, the petitioner made a written demand for removal of the dish. Repeated demands were made on January 7 and March 1, 2000. The March 1 letter stated that unless the dish were removed within 14 days, the respondent could expect a petition for arbitration to be filed. The petition was filed on April 26, 2000, but was not immediately served on the respondent by certified mail; the certified mail package was returned unclaimed. The respondent's copy of the petition and the order requiring answer were served on the respondent on June 19, 2000. At an undetermined date "several weeks" prior to June 19, the dish was removed from the wall. The petitioner asserts that the removal occurred after the April 26 filing date of the petition, well after the 14-day grace period given to the respondent in the March 1 letter, while the respondent argues that he removed the dish during the "grace period" and that the petition should not have been filed.5

Section 718.1255(4)(k), Florida Statutes provides that in cases filed subsequent to October 1, 1997, "[t]he prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees, in an amount determined by the arbitrator." With regard to the motion filed by the association, it is necessary pursuant to s. 718.1255, F.S., to determine which party prevailed in the underlying action. A party is a prevailing party if it succeeds on a significant issue in the case and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So.2d 807 (Fla. 1992). Prevailing party status may

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5 It is not clear that the petitioner and the respondent are referring to the same grace period; the petitioner does not use the term and the respondent does not specify what

also be found if the legal action is the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law. 51 Island Way Condominium Association, Inc. v. Williams, 458 So.2d 364 (Fla. 2nd DCA 1984); Hoffmeister v. Coler, 544 So.2d 1067 (Fla. 4th DCA 1989). A party may be a prevailing party even if the case is not resolved on the merits. Hall v. Dept. of Health & Rehabilitative Services, 409 So.2d 193 (Fla. 3rd DCA 1982). This proposition finds application where a case becomes moot when the opposing party voluntarily provides the relief sought in the action. 51 Island Way, supra; Suncrest Townhouse Condominium, Inc. v. Bottorff, Arb. Case No. 92-0177, Final Order (March 25, 1993).

In West Wind Estates Condominium Association, Inc. v. Becker, Arb. Case No. 94-0301F, Order on Motion for Attorney's Fees (Aug. 15, 1995), citing Hewitt v. Helms, 482 U.S. 756 (1986); Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. Ct. 1976), the arbitrator set forth the appropriate test for determining the prevailing party where the arbitration petition is dismissed as moot:

> A party can be considered a "prevailing party", even though the case is moot, when (1) it has obtained the relief it sought in the arbitration or lawsuit; (2) the petition for arbitration or lawsuit was the catalyst that motivated the opposing party to take the action causing the case to become moot; and (3) the action taken by the opposing party was required by law.

West Wind Estates at p. 7.

The pleadings do not reflect a causal relationship between the petition and the removal of the dish. Since the dish was removed prior to service and therefore before the respondent had

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he means by a grace period.

actual notice of the petition, it cannot be said that the petition was the catalyst that motivated the respondent to remove the dish or that the respondent voluntarily provided the relief sought in the petition as a result of the petition. It therefore cannot be said that the petitioner succeeded on a significant issue in the case6 and it cannot be held that the petitioner was the prevailing party. The petitioner's motion for prevailing party attorney's fees and costs is accordingly DENIED.

DONE AND ORDERED this 13th day of October 2000, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept. of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to ANAND ACHAIBAR at 716 EARLS CT, SAFETY HARBOR FL 34695 and to STEVEN H. MEZER, ESQ. at BUSH ROSS GARDNER ET AL, 220 S FRANKLIN ST, TAMPA FL 33602, on this the 13th day of October 2000.

_____

Therese Pine, Arbitrator

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6 The repair of the holes, for which the respondent was held responsible, was purely incidental to the main action.

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

IN RE: PETITION FOR ARBITRATION

SAMIRA HAIDAR,

Petitioner,

v. Fee Case No. 00-1526
Rel. Case No. 00-1041

TARPON WOODS CONDOMINIUM IV ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES

The association filed a motion for attorney's fees and costs totaling $507.50, arising out of arbitration case number 00-1041. An order was entered allowing Ms. Haidar to file a response in opposition to the motion for fees and costs, but she did not reply.

As the parties were advised at the outset of the arbitration process, the law provides that in cases filed subsequent to October 1, 1997, "[t]he prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees, in an amount determined by the arbitrator." Section 718.1255(4)(k), Florida Statutes.

In the underlying case, the petition sought relief from the association's demands that lawn or garden decorations be removed or reduced in number. The petition was dismissed pursuant to Rule 61B-45.036, Florida Administrative Code, for refusal of the petitioner to file documents as lawfully required by the arbitrator. The petition having been dismissed in this manner,

association is the prevailing party in this case and the only remaining question is the amount of reasonable fees and costs to be awarded.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The reasonableness of a fee is determined by such factors as the difficulty of the question involved, the fee customarily charged in the locality for similar legal services, and the experience and ability of the attorney.

In the instant case, the petitioner's counsel has been practicing law since November 1977, is board certified in real estate law, and has devoted a substantial portion of his practice to the representation of community associations for the past 18 years. The file reflects that he handled the issues competently. The association requests reimbursement for his services at the rate of $175.00 per hour. The rate is reasonable in light of counsel's experience and ability, and is awarded.

The affidavit filed in support of the motion lists charges totaling 2.9 hours. These charges reflect reasonable expenditures of time. The association is awarded compensation for 2.9 hours of its attorney's time at $175.00 per hour, or $507.50 in fees.

Therefore, it is ORDERED:

The motion for attorney's fees and costs is GRANTED. Samira Haidar shall pay the association $507.50 within thirty days of the date of this order.

DONE AND ORDERED this 13th day of October 2000, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept. of Business and Professional Regulation

Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to SAMIRA HAIDAR at 3505 TARPON WOODS BLVD #K-402, PALM HARBOR FL 34685 and to STEVEN H. MEZER, ESQ. at BUSH ROSS GARDNER ET AL, 220 S FRANKLIN ST, TAMPA FL 33602, on this the 13th day of October 2000.

_____
Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

HABITAT II CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v,

Fee Case No. 00-1604
Rel. Case No. 00-0535

GRAHAM SMITH,

Respondent.
_____/

ORDER ON MOTION FOR RECONSIDERATION

On November 29, 2000, a final order on attorney's fees was entered in this case. The final order required the association to pay attorney's fees in the amount of $1,965.00 to the respondent. On December 12, 2000, the petitioner filed by fax a motion for reconsideration of the award. The respondent has not filed a response to the motion.

The petitioner contends that attorney's fees should not have been awarded to the respondent because the respondent failed to properly plead and pray for an award of attorney's fees prior to the entry of the final order in the underlying arbitration proceeding. The final order considered this argument, which was raised by the petitioner in its response to the respondent's motion for attorney's fees, and stated as follows:

> The arbitrator has reviewed the file in this case and finds that a request for an award of attorney's fees was filed on August 7, 2000 by the respondent in his reply to the association's untimely memorandum of law (page 1). The final order was entered on August 25, 2000. Therefore, the requirement that an award of fees

be requested prior to entry of the final order was met.

Rule 61B-45.044, Florida Administrative Code, provides in pertinent part as follows:

> (1) A motion for rehearing may be filed within 15 days after the date of entry of the final order. The motion shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended and shall not reargue the merits of the final order. Any response to the motion must be filed within 10 days of service of the motion. (emphasis supplied).

The petitioner's motion for reconsideration argues that an award of fees was precluded because the respondent's request "[was] merely an unsupported prayer contained in the "Wherefore" clause of the respondent's motion. Therefore, the respondent has failed to plead attorney's fees with specificity as required by Florida law…" The petitioner's motion for rehearing reargues the merits of the final order; rehearing on these grounds is inappropriate.

Even if the petitioner's points were addressed, they would be rejected. The underlying arbitration proceeding was decided summarily. Shortly after the answer was filed, the arbitrator indicated her intent to enter a summary final order, and gave the parties the opportunity to file legal arguments in support of their respective positions. On July 28, 2000, the association filed its memorandum of law. On August 7, 2000, the respondent filed a reply to the memo. In the "Wherefore" or relief section of the reply, the respondent requested the arbitrator to "Award respondent its costs and reasonable attorney's fees pursuant to the declaration."

The petitioner appears to be complaining that the request was not specific enough and it was not made in a pleading but rather was include in a vague prayer. The petitioner argues that the award is precluded by Stockman v. Downs, 573 So. 2d 835 (Fla. 1991). In Stockman, the court held that a party's failure to plead entitlement to attorney's fees, whether based on statute

or contract, prior to the entry of a final judgment, constitutes a waiver of the claim. The court's fundamental concern was notice and the effect on the parties' decisions in the case of the existence or nonexistence of a motion for attorney's fees.

The petitioner's reliance on Stockman is misplaced. Stockman does not require a request for attorney's fees to be made in a pleading. The request may be made in a pleading or motion. See Green v. Sun Harbor Homeowners' Association, Inc., 685 So. 2d 23, 24 (Fla. 4th DCA 1996)("The primary focus of Stockman is actual notice of a claim for fees, not whether the notice had to take the form of a pleading, to the exclusion of a motion."). As for the suggestion that the request lacks specificity, the arbitrator notes that these arbitration proceedings are conducted within the narrow confines of Section 718.1255, Florida Statutes. Section 718.1255(4)(k), Florida Statutes, provides that "[t]he prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator." Additionally, every petitioner in an arbitration proceeding receives a letter confirming assignment of the petition to an arbitrator, and this letter states that "if you lose the arbitration, you will be required to pay the other party's costs and attorney's fees." In the arbitration proceedings conducted pursuant to Section 718.1255, Florida Statutes, the question is not whether the request for attorney's fees cites a specific statutory basis, rather it is whether the request was made prior to entry of the final order.

In Shields v. Versailles Gardens I Condominium Association, Inc., Arb. Case No. 98-4609, Final Order on Attorney's Fees (September 24, 1998), attorney's fees were awarded pursuant to Section 718.1255(4)(k), Florida Statutes, where the petition requested "[p]ayment of damages, both actual and statutory minimum and attorney's fees relevant to same." The

respondent's objection to an award of attorney's fees based on the notice requirements of Stockman was rejected. The arbitrator stated:

> It is true that the petitioner did not specifically state in his amended petition that the basis of his claim for attorney's fees was Section 718.1255(4)(k), Florida Statutes. However, the undersigned does not believe that Stockman should be read so technically. In an arbitration pursuant to Section 718.1255, Florida Statutes, there can be little question that a party's plea for attorney's fees refers to attorney's fees pursuant to Section 718.1255(4)(k), Florida Statutes.

Based on the foregoing, it is ORDERED:

The petitioner's motion for reconsideration of the final order on attorney's fees is DENIED.

DONE AND ORDERED this 11th day of January 2001, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Leigh C. Katzman, Esq., Katzman & Korr, P.A., 1100 South State Road Seven, Suite 102, Margate, FL 33068 and John B. Bowman, Esq., 8142 N. University Drive, Tamarac, FL 33321 this the 11th day of January, 2001.

_____

Patricia A. Draper, Arbitrator

STATE OF FLORIDA

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

IN RE: PETITION FOR ARBITRATION

VIVIENE BROWN-MYRTIL,

Petitioner,

v. Fees Case No. 00-1834
Rel. Case No. 00-1039

OAKLAND FOREST CLUB
CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES AND COSTS

On October 30, 2000, the petitioner, Viviene Brown-Myrtil, moved for an award of $1,160 in attorney's fees and $50 in costs, totaling $1,210. The fee request relates to underlying arbitration case number 00-1039. On October 31, 2000, an order permitting response to the motion was issued. On November 6, 2000, the respondent filed a response to the petitioner's motion for attorney's fees and costs and moved for an award of $779 in attorney's fees and $29.87 in costs. On November 14, 2000, the petitioner filed a response to the respondent's motion and amended its motion for fees to include the cost of responding to the respondent's motion.

In the underlying dispute, which was filed on June 7, 2000, the petitioner alleged that the association had failed to produce for inspection and copying the

association's Directors and Officers liability insurance policies for the years 1997, 1998, 1999, and 2000, in violation of section 718.111(12), Florida Statutes. The petitioner asserted that because the association had denied her access to the official records she was entitled to $500 in damages. On October 23, 2000, a Summary Final Order was issued in which the respondent was ordered to obtain a copy of its current Directors and Officers liability insurance policy and to produce it for the petitioner's inspection and copying. The respondent was also ordered to thereafter maintain a copy of its current insurance policy for timely inspection by unit owners.

Pursuant to Section 718.1255(4)(k), Florida Statutes (1999), the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Although the petitioner's request for damages was denied, the petitioner succeeded on a significant issue in the case and achieved some of the benefit sought when initiating this case. The fact that the petitioner did not achieve all of the relief requested does not make the respondent a prevailing party. The primary issue in the dispute was access to the association's Directors and Officers liability insurance policy; the respondent was ordered to obtain a copy of its current policy and provide it to the petitioner. Thus, the petitioner, and not the respondent, is the prevailing party.

The petitioner's counsel, F. Blane Carneal, Esquire, charged $200 per hour for his legal services. Counsel has been licensed to practice law in the State of Florida since December 1978 and has experience in the area of condominium law. The rate of $200 per hour does not exceed the rate customarily charged in similar cases for attorneys with similar experience. See Pine Island Ridge Condominium G Association, Inc. v. Delguidice, Arb. Case No. 00-1281, Final Order on Motion for Attorney's Fees (August 25, 2000)(where counsel had been licensed to practice law for 27 years and has legal experience in the area of condominium law, $200 per hour was awarded for his legal services). Therefore, the petitioner will be compensated at the requested rate for counsel's legal services.

The petitioner seeks recovery for 5.8 hours. The entries listed on the petitioner's billing statement for activities occurring prior to the preparation of the petition, totaling .7 hour, are denied. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable). The remaining 5.1 hours reflect reasonable expenditures of time to litigate this case and will be awarded. Thus, the petitioner is awarded $1,020 (5.1 hours at $200 per hour) in attorney's fees.

In addition, the petitioner requests compensation for the $50 filing fee. The filing fee is recoverable and will be awarded.

Wherefore, the petitioner is awarded $1,020 in attorney's fees and $50 in costs, totaling $1,070.

It is therefore ORDERED:

1. The petitioner's motion for attorney's fees and costs is GRANTED in part.

2. The respondent's motion for attorney's fees and costs is DENIED.

3. The respondent, Oakland Forest Club Association, Inc., shall pay the sum of $1,070 to the petitioner, Vivien Brown-Myrtil, within thirty days of the date of this order.

DONE AND ORDERED this 30th day of November 2000, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S.

mail, postage prepaid, to F. Blane Carneal, Esquire, F. Blane Carneal, P.A., Post Office Box 030129, Fort Lauderdale, FL 33303 and Leigh C. Katzman, Esquire, Katzman & Korr, P.A., 1100 S. State Road 7, Suite 102, Margate, FL 33068, this 30th day of November 2000.

_____
Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

MARJORIE MALONE,

Petitioner,

v.

Fee Case No. 00-1934
Rel. Case No. 00-0558

PEBBLE SPRINGS CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER ON MOTION FOR COSTS

The petitioner has filed a request for damages awarded in the final order in Arb. Case No 00-0558 and for an award of the costs necessary to pursue that award. Subsequently, the respondent filed notice that the damages awarded were paid to the petitioner; accordingly, the remaining issue is the amount of prevailing party costs to be awarded to the petitioner pursuant to Section 718.1255, Florida Statutes, which provides that the prevailing party in an arbitration proceeding is entitled to an award of reasonable costs and attorney's fees incurred in the arbitration proceeding.

The petitioner, who was not represented by an attorney in the underlying action, incurred no attorney's fees. However, she seeks an award of prevailing party costs of arbitration in the amount of $3,579.61. The major component of that total is $2,715.00 for paralegal costs and research.

The arbitrator's order dated November 27, 2000, adopted the holding of Estes and Alderman v. Lido of Pinellas Condominium Association, Inc., Arb. Case No. 95-0421F, Final Order on Attorney's

Fees (May 31, 1995) wherein the arbitrator held that paralegal services may be compensable where the services sought to be compensated are non-clerical, meaningful legal work done under the supervision of an attorney, but that where the services are performed by a non-attorney consultant who files documents as the party's representative, services are not compensable. Based on that reasoning, the petitioner in the present case was advised that she would not be compensated for the services of Michael Lee as her Qualified Representative.

Michael Lee described himself as a law school graduate, as a consultant, and as the petitioner's qualified representative. He made telephone calls on the petitioner's behalf, filed a Department of Business and Professional Regulation form seeking authorization to act as the petitioner's qualified representative, and represented the petitioner at the hearing. The petitioner however signed all the pleadings. In pleadings filed in the underlying case, the petitioner asked to be awarded "professional and other fees" (Petitioner's Supplemental Final Argument, filed September 1) and "consultant's fees" (Petitioner's Request for Consultant's Fees And Costs, filed August 25, 2000, and Petitioner's Final Argument, filed August 25, 2000). The petitioner asserts that except during the hearing, she represented herself with the expert assistance of a non-attorney consultant, and that she is entitled to reimbursement of the cost of that expert assistance.

In the order dated November 27, 2000, the petitioner was notified that paralegal services must be described particularly, and she was directed to describe the paralegal and research services for which she requests compensation. In reply, she filed a list of dates and ranges of dates, each with a dollar figure. The petitioner was at that point specifically notified that the pleading was insufficient to support an award of costs for paralegal and research fees because it did not state the number of hours spent on each item or the hourly figure charged, or describe actual actions taken that would distinguish a clerical

function from work requiring the expertise of a paralegal. The petitioner was again granted permission to amend the pleading. The final form of the motion does not state the number of hours spent on each item or the hourly figure charged, or describe actual actions taken that would distinguish a clerical function from work requiring the expertise of a paralegal. The pleading in its current form is accordingly still insufficient to support an award of costs for paralegal and research fees, and the motion for reimbursement of this cost is denied.

The petitioner requests reimbursement of the $50.00 arbitration filing fee plus $17.00 to serve a witness. The filing fee is routinely awarded to prevailing parties, as is the cost of serving a witness. These costs will be reimbursed by the association.

The petitioner also requests reimbursement of $663.42 for postage, supplies and copying; and $134.19 for long distance calls and faxing fees. Expenses such as postage, supplies, copying, long distance calls and faxing fees are normally not awarded, on grounds that they are ordinary office expenses that should be factored into the prevailing party's attorney's hourly rate rather than awarded separately as costs. In this case, however, the prevailing party had no attorney under whose fee these expenses should be subsumed and the costs are documented by receipts. The costs were reasonably related to the prosecution of the petitioner's case and will be reimbursed except for the $63.60 cost of the video transfers. The video was not presented as evidence and the cost is not awarded.

ACCORDINGLY, IT IS ORDERED: The association shall within 20 days of the date of this order pay to the petitioner $801.01.

DONE AND ORDERED this 13th day of March 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept of Business and Professional Regulation

Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to VALERIE KIFFIN LEWIS, ESQ. at VALERIE KIFFIN LEWIS, PA, 4801 S. UNIVERSITY DR. STE. 102, FORT LAUDERDALE FL 33328 and to RHONDA HOLLANDER, ESQ. at RHONDA HOLLANDER PA, 1861 N FEDERAL HWY #191, HOLLYWOOD FL 33020 on this the 13th day of March 2001.

_____
Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

ISRAEL BARRERA, individually, and BLEAU FONTAINE CONDOMINIUM NUMBER TWO, INC., a non-profit Florida corporation,

Petitioners,

v.

Fee Case No. 01-2223
Rel. Case No. 00-1570

BLEAU FONTAINE COMMUNITY ASSOCIATION, INC., a non-profit Florida corporation,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On January 3, 2001, Israel Barrera and Bleau Fontaine Condominium Number Two, Inc. (petitioners) filed a motion for attorney's fees and costs in the amount of $4,502.67. The requested fees and costs were expended in arbitration case no. 00-1570. In that case, the petitioners alleged that Bleau Fontaine Community Association, Inc. (respondent) failed to properly conduct an election for positions on its board of directors when it refused to accept ballots hand-delivered to the election meeting by individuals other than the unit owners casting the ballots. The case was dismissed following the filing of a stipulation to voluntarily dismiss the case as moot. The stipulation provided that certain individuals would be seated as board members on the community association's board, and that the arbitrator would reserve jurisdiction to determine an award of petitioners' costs and attorney's fees, if any. The respondent filed a response to the petitioners'

motion on January 5, 2001.

Pursuant to Section 718.1255(4), Florida Statutes, the prevailing party shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla. 1992). The petitioners' contention in the underlying arbitration was that the respondent erred by not counting ballots delivered to the election meeting on behalf of absent unit owners, and that if these ballots had been accepted, Batista, Dehrs, Cano and Azcarretta, would have won positions on the board. In a partial summary order entered November 22, 2000, the arbitrator ruled that the respondent erred by not accepting the ballots in question. The order noted that the respondent claimed that it disregarded these ballots for other, additional reasons such as illegible signatures or invalid names corresponding to unit owner lists, and scheduled further proceedings. Thereafter, the respondent agreed to seat Batista, Dehrs, Cano and Azcarretta as directors. Since the petitioners attained a significant portion of the relief sought in the petition, they are the prevailing party.7

The petitioners request $4,502.67 in attorney's fees for 28.5 hours spent by two attorneys, Laura Manning, Esq. and Helio De La Torre, Esq., who charge $150.00 and $190.00 per hour, respectively. The respondent filed an objection to the motion contending that the hours expended by the attorneys for the petitioners are grossly excessive for the subject matter of the arbitration. The response included an affidavit of Nelson C. Keshen, Esq. stating that the time expended by

7 The respondent does not dispute the petitioners' assertion that they prevailed.

the petitioners' attorneys was excessive and that a reasonable sum for fees in this case would be $1,500.00. On January 12, 2001, the petitioners filed the affidavit of Robert Meyer, Esq. stating that the time spent by petitioners' attorneys was necessary and that a reasonable fee for the legal services would be $4,350.00.

A reasonable attorney's fee in Florida is determined using the "lodestar" approach: the "lodestar" amount is calculated by multiplying the reasonable hourly rate by the number of hours reasonably expended by the attorney. See Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985); see also Centex–Rooney Construction Co., Inc., et al v. Martin County, 725 So. 2d 1255 (Fla. 4th DCA 1999). The determination of an award of attorney's fees is within the sound discretion of the trial court. See Centex-Rooney, above.

Attorney Laura Manning bills at the hourly rate of $150.00 and Helio De La Torre bills at the hourly rate of $190.00. Manning has less than five years of experience and De La Torre has more than 20 years of experience; both have considerable expertise in the area of condominium and association law, and provide their services in the Miami area. It is determined that their hourly rates are reasonable.

The arbitrator has undertaken an extensive review of the attorneys' billing records and the record in this case, and finds that a reasonable amount of time to have spent on this matter is 14.65 hours. The billing records reflect some duplication of services, with Manning and De La Torre each billing for reviewing the same pleadings on 10/11/00, 10/12/00, 11/16/00, 11/17/00, 11/20/00 and 11/21/00, and each drafting the same affidavit on 11/20/00 and 11/22/00. Manning's time will not be awarded for this duplication of services (2.50 hours). The time spent

researching and drafting a 7-page motion for summary disposition—11.0 hours—is excessive and will be reduced to 3.0 hours for Manning and 1.0 hour for De La Torre. Manning spent .25 hour on 9/01/00 reviewing the standard order requiring answer, that merits only a cursory review by counsel experienced in proceedings pursuant to Section 718.1255, Florida Statutes. This time will not be awarded; nor will the .25 hour spent on 10/31/00 preparing an action for declaratory relief that is unrelated to this case. Finally, on 10/24/00, 11/27/00, 12/04/00 and 12/06/00 both attorneys billed 2.25 hours for receiving pleadings and making telephone calls. Because these services were billed in quarter-hour increments, the total time billed is overstated. The time is reduced to .70 hour for Manning and .20 hour for De La Torre. In addition, Manning spent 2.50 hours on an emergency motion for expedited determination of jurisdiction that was unnecessary and will not be awarded. The motion was filed a month after entry of an order determining that jurisdiction existed over the dispute. Subtracting these hours leaves a total of 14.65 hours that were reasonably spent on this case (10.70 at the hourly rate of $150.00 and 3.95 at the hourly rate of $190.00).

The petitioners also seek costs in the amount of $57.67. The $50.00 filing fee will be awarded. The amount claimed for Westlaw services is considered a routine office expense and will not be awarded. See Mitchell v. Osceola Farms Co., 574 So. 2d 1162 (Fla. 4th DCA 1991).

For these reasons, it is ORDERED:

1. The petitioners' motion for attorney's fees is GRANTED in part. .

2. Within 30 days of the date of this order, the respondent shall pay to the petitioners the sum of $2,405.50 (10.70 hours at the hourly rate of $150.00 and 3.95 hours at the hourly rate of $190.00 plus $50 in costs).

DONE AND ORDERED this 26th day of January 2001, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Helio De La Torre, Esq., Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., 201 Alhambra Circle, Suite 1102, Coral Gables, Fl 33134 and Brian W. Pariser, Esq., Law Office of Brian W. Pariser, P.A., Datran II—Suite 1511, 9130 South Dadeland Boulevard, Miami, FL 33156 this the 26th day of January, 2001.

_____

Patricia A. Draper, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE BARRTON APARTMENTS, INC.,

Petitioner,

v. Fee Case No. 01-2226
Related Case 00-1245

SUSAN BROCKMILLER WORCESTER,

Respondent.
_____/

AMENDED FINAL ORDER ON MOTION FOR COSTS AND ATTORNEY'S FEES

This amended final order is entered pursuant to the undersigned's order on motion for rehearing, entered on March 29, 2001.

Petitioner filed a motion for costs and attorney's fees, seeking recovery of $2,475.00. Respondent responded to the motion on January 25, 2001.

The motion for fees arises out of the related case no. 00-1245, in which the petition for arbitration filed on July 5, 2000, sought as relief an order requiring the respondent to comply with the association's declaration regarding the respondent's improper storage of furniture in the hallway, improper parking, and installing tile and decorations in the hallway without approval. During the pendency of the arbitration proceedings, on September 15, 2000, the petitioner filed a notice that, for safety reasons, it removed the items and tile from the hallway and replaced the carpet. On November 30, 2000, the undersigned entered a summary final order directing the

respondent to refrain from placing furniture or personal objects in the hallways, ordering her to park only in her assigned space, and requiring her to remove any decorations from the hallways, and ordering her to comply in the future with the applicable provisions of the declaration of condominium and rules and regulations. Since the association achieved the result is sought in filing the petition, it is entitled to recovery of prevailing party attorney's fees pursuant to Section 718.1255(4)(k), Florida Statutes.

Respondent asserts in response to the motion for fees that respondent's counsel faxed a letter to petitioner's counsel on August 4, 2000, suggesting that an agreed order could be entered into resolving all issues; however, counsel for petitioner responded on August 10, 2000, requesting that respondent file an answer, which she did. Respondent states that at the time of the August 4 letter to petitioner's counsel, respondent was out of state confined to a hospital and was then unavailable to cure the defects. She argues that, if a consent order had been entered into as suggested by respondent, much of the time incurred by petitioner's counsel could have been avoided and, therefore, the award of fees should be reduced accordingly.

The file in the underlying case reflects that the only pleading or paper filed by respondent was her answer, filed on August 11, 20008. Respondent addressed the

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8 Carol McMillan Stanley, Esq., copied the Division on August 1, 2000, with a letter to petitioner's counsel in which Ms. Stanley stated that she would not be representing the respondent, who was "away for the summer" and requested an extension of time. However, the answer was nevertheless filed timely on August 11, 2000.

allegations of fact in the petition but made no mention of illness, nor did she request that these proceedings be abated pending settlement. The parties did not copy the arbitrator with the correspondence regarding a proposed consent order mentioned in the response to the motion for fees. Under the current statute, the award of fees is mandatory and not discretionary; thus, reasonable fees are recoverable for services rendered on behalf of the prevailing party during the pendency of the arbitration. Consequently, respondent's argument that fees should be reduced due to petitioner's failure to settle the matter early in the proceedings is inapposite and is REJECTED.

The petitioner was represented by Guy M. Shir, Esq.; the hourly rate billed for his services is $150 per hour. The rate sought does not exceed that billed for services of attorneys with similar experience in the West Palm Beach, Florida, area. Therefore, fees will be awarded at the rate sought.

Rule 61B-45.048(7), Florida Administrative Code, discusses the factors to be considered by the arbitrator in determining a reasonable attorney's fee. The arbitrator must determine the amount of time reasonably expended in the arbitration case, which may not necessarily be the number of hours spent by counsel as reflected in a motion for fees. See Ocean Riviera Assn., Inc. v. Mahayni, Arb. Case No. 94-0102F, Final Order (May 13, 1994). In the present case, the billing records attached to the motion reflect that, between June 26, 2000, and June 29, 2000, 5.3 hours were expended, primarily for preparation and drafting of the petition for arbitration. Three hours is deemed reasonable for these tasks and will be awarded. The charge totaling .9 hour

on July 7, 2000, for drafting of a motion presenting additional exhibits and for expedited determination of jurisdiction is reduced to .3 hour, since no motion for expedited determination of jurisdiction was filed. Charges of 2.2 hours for review of the summary final order and drafting of the motion for fees on November 30 and December 28, 2000, are excessive; one hour will be awarded for these tasks. After the above deductions, it is found that the association is entitled to 11.6 hours at $150 per hour for a total fee award of $1,740.

The charge of $50 for the arbitration filing fee is a reasonable cost and will be awarded.

Recovery is sought for a charge of $70 for "service of process" by Action Investigations by Muller, Inc. It is noted in this regard that the association served a letter to the respondent dated June 30, 2000, along with a copy of the petition for arbitration. This was one business day before the date that the petition was mailed to the Division. The cover letter served stated that "once the Division has determined that it has jurisdiction over this dispute, it will notify you by United States Mail." The letter goes on to state that the respondent is deemed as of the date of service to be on notice of the association's petition, and further states that the petitioner's counsel would advise her to consult an attorney. The undersigned finds that in an ordinary instance, service of process is a recoverable cost. Putting the respondent on notice that a petition for arbitration has been filed, however, does not constitute service of process, because no order had been entered requiring the respondent to answer;

respondent was not being served with an order requiring her to do anything at that point. See Black's Law Dictionary (7th Edition, 1999), which reflects in pertinent part:

> **process,** *n. . . .* **2.** A summons or writ, esp. to appear or respond in court <service of process>. .

Because petitioner's unilateral decision to put the respondent on notice by personal service that a petition was being filed does not constitute service of process and is not otherwise an appropriate and relevant cost, this is not a recoverable cost in this case. But see Eagle's Nest Condo. Assn., Inc. v. Small, et al., Arb. Case No. 98-3732, Final Order on Attorney's Fees (March 29, 1999) (Association's cost of personally serving multiple respondents with order requiring answer and petition was allowed, as arbitrator ordered service). In some instances, such as when the respondent immediately provides the relief sought, it would be important to know the date when the notice was served that a petition was being filed. In that special instance, it could be argued that the service was a necessary cost, and hence recoverable, since the return of service would be relevant in determining the prevailing party. Those circumstances, however, do not exist in the present case. The total award of fees and costs is $1,790.00.

Wherefore it is ORDERED:

Susan Brockmiller Worcester shall pay $1,790.00 to The Barrton Apartments, Inc., within 30 days of the mailing of this final order.

DONE AND ORDERED this 29th day of March, 2001, at Tallahassee, Leon County, Florida.

_____
Tyler Powell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry of the order, a complaint for a trial *de novo* with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 29th day of March, 2001, to:

GUY SHIR ESQ
BECKER AND POLIAKOFF P A
500 AUSTRALIAN AVE S 9TH FL
WEST PALM BEACH FL 33401
Attorney for petitioner

DAVID W SCHMIDT ESQ
SIMON AND SCHMIDT
100 N E FIFTH AVE
DELRAY BEACH FL 33483
Attorney for respondent

_____
Tyler Powell, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Tivoli Trace Condominium Association, Inc.,

Petitioner,

v. **Fee Case No. 01-2331**
Rel. Case No. 00-0567

Solange Jurcik,

Respondent.
_____/

FINAL ORDER ON REQUEST FOR ATTORNEY'S FEES AND COSTS

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for costs and attorney's fees on January 16, 2001. An order permitting response was entered by the arbitrator; respondent has filed nothing in response to the motion for fees. By the motion, the association seeks to be compensated for 38.3 hours of its attorney's time billed at $150 per hour as well as $80 in costs.

The costs and fees sought to be recovered by the association were incurred in its prosecution of arb. case no. 00-0567. In that case, the arbitrator entered an order on January 3, 2001, ordering respondent to remove her dog from the unit. The dog was found to be a nuisance. The association, having obtained the benefit sought in bringing the underlying action, was the prevailing party. The prevailing party in arbitration

proceedings conducted pursuant to s. 718.1255, F.S., is entitled to have the other party pay its reasonable costs and attorney's fees. Therefore, the respondent is required to pay the association its reasonable costs and fees.

Counsel for the association was compensated at the hourly rate of $150. This rate is found to be reasonable considering the experience and expertise of counsel and compares favorably with the rates charged by attorneys of similar experience performing arbitration representation in the community in which the condominium is located.

The association seeks compensation for 38.3 hours of its attorney's time. The arbitrator has conducted a review of the activities for which compensation is sought in order to determine the reasonableness of the activities undertaken and to determine the reasonableness of the time spent on each activity. Counsel spent 1.80 hours preparing and filing the petition for arbitration; this is reasonable. Counsel spent .30 hours reviewing the standard order requiring answer directed to respondent; this is disallowed. The only other area of concern is trial preparation. Counsel spent 14.7 hours preparing for the final hearing. At the final hearing, the association called 3 witnesses, and the final hearing lasted 5 hours or less. The arbitrator determines that 10 hours of preparation for the trial would be reasonable.

With those exceptions noted above, the remainder of the entries are found to be reasonable. From the 38.3 total hours claimed is deducted the sums of .30 and 4.7, leaving 33.30 hours, billed at $150 per hour, for a total attorney's fee of $4,995.00. Costs for the filing fee and service fee in the total amount of $80 are allowed.

Respondent shall pay to the association the sum of $5,075.00, within 30 days of the date of issuance of this final order.

DONE AND ORDERED this 6th day of March, 2001, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service:

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 6th day of March, 2001: Kenneth E. Zeilberger, Esquire, Kaye & Rogers, P.A., Corporate Park, 6261 N.W. 6th Way, Suite 103, Ft. Lauderdale, Florida 33309, to Stephen Karaski, Esquire, 1000 East Atlantic Blvd., Suite 201F, Pompano Beach, Florida 33060, and to Solange Jurcik, 545 Tivoli Trace Circle, Apt. 209, Deerfield Beach, Florida 33441.

_____
Karl M. Scheuerman, Arbitrator

Right of Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the

parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

Halifax Shores Homeowners Association, Inc.,

Petitioner,

v. **Fee Case No. 01-2346**
Rel. Case No. 00-1553

Reno Varano,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for award of attorney's fees on January 19, 2001. The association requests reimbursement for $695 in attorney's fees representing 6.95 hours billed at $100 per hour. The respondent has not filed a response to the motion for fees.

The work for which the association seeks to be reimbursed was undertaken in connection with the underlying arbitration case, case no. 00-1553. A final order was entered in that proceeding on December 19, 2000. The order required the respondent to provide a key to his unit to the association; an order denying rehearing was entered on January 5, 2001, in response to a motion filed by respondent on January 3, 2001.

Section 718.1255, F.S., entitles the prevailing party in an arbitration proceeding

to an award of reasonable costs and attorney's fees. Clearly, the association prevailed in this action, having obtained the relief it initially sought in filing the petition. Therefore, the association is entitled to an award of its attorney's fees.

Equally clearly, the amounts paid by the association to its attorney were fair and reasonable. The hourly rate of $100.00 is at or below the rate charged for representation in these proceedings by attorneys of similar experience practicing in the area in which the condominium is located, which ranges from $125 to $175 per hour. Counsel has been a member of the Florida Bar since 1988 and practices in Daytona Beach. Therefore, the association will be reimbursed at this hourly rate.

The arbitrator has reviewed the activity accounts submitted by the association. It cannot be said that the times spent by counsel in performing various activities designed to further the case of the association are excessive. The entry corresponding to July 16, which describes the drafting of the pre-arbitration notice letter required by s. 718.1255, F.S., while undertaken before the commencement of the proceeding below, is required by statute and is awarded. The only deduction is the entry for work undertaken on August 28, 2000, wherein counsel spent .50 hours in "preparation of copies and mailing." This entry does not appear to describe legal work necessary for the prosecution of this case and is disallowed.

In sum, the association is awarded 6.45 hours billed at $100 per hour for a total of $645.00. Respondent shall pay this amount to the association within 30 days of the entry of this order.

DONE AND ORDERED this 12th day of March, 2001, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 12th day of March, 2001: Paul Kwilecki, Jr., Esquire, 629 North Peninsula Drive, Daytona Beach, Florida, 32118, and to Reno Varano, 405 North Halifax Avenue, Unit 213, Daytona Beach, Florida 32118.

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order awarding attorney's fees may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit court in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

THE TRELLISES CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v. Fees Case No. 01-2367
Rel. Case No. 00-0866

SHARI STIER,

Respondent.
_____/

AMENDED FINAL ORDER ON MOTIONS FOR ATTORNEY'S FEES AND COSTS

A Final Order on Motions for Attorney's Fees and Costs was entered on March 28, 2001. The respondent timely moved for reconsideration/correction of the final order. The petitioner filed a response to the motion. Upon review of the file in the underlying case and the petitioner's billing statement, it is determined that the final order incorrectly awarded recovery to petitioner for entries that occurred after the issue of the rabbit had become moot. The petitioner filed a response to an order to show cause on July 14, 2000, via fax; in that pleading the petitioner did not deny that the rabbit had died, but argued that the respondent remained in violation of the relevant restrictions because she had obtained a bird. Therefore, this order is amended to reduce the petitioner's recoverable awards to those entries that occurred between February 21, 2000, and July 14, 2000, plus one hour for preparation of the petitioner's motion for attorney's fees and costs.

On January 29, 2001, the respondent, Shari Stier, moved for an award of $2,200 in attorney's fees. An order permitting response to the motion was issued on January 31, 2001. On February 20,

2001, the petitioner, The Trellises Condominium Association, Inc., filed a response to the respondent's motion and moved for an award of $2,837.50 in attorney's fees and $50 in costs, totaling $2,887.50.

In the underlying dispute, the association alleged that the respondent was maintaining a caged rabbit on her porch without written approval from the board, and that the rabbit was creating a nuisance and a threat to the safety and welfare of other unit owners. On June 28, 2000, the respondent moved to dismiss the petition due to the death of the rabbit. In response to an order to show cause why the case should not be dismissed as moot, the petitioner denied that the case was moot stating that the respondent had in the interim obtained a bird without obtaining prior written approval from the board. On January 22, 2001, a summary final order was entered finding that the dispute was moot as to the deceased rabbit and that the existence of the bird in the respondent's unit did not constitute a violation of the condominium documents.

A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). There need not be a determination on the merits for purposes of a fee award if the applicable statutory provision provides for fees to a prevailing party. State Department of Health and Rehabilitative Services v. Hall, 409 So. 2d 193 (Fla. 3d DCA 1982). This proposition applies when a case becomes moot because the opposing party voluntarily provides the relief sought in the action. See 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 364, 367 (Fla. 2d DCA 1984). Because the respondent was maintaining a rabbit on the condominium property without board approval when the petition was filed, the maintaining of a rabbit constitutes a violation of Section 17(B) of the

declaration, and the respondent raised no viable defense regarding this claim, the petitioner prevailed on the rabbit issue.

After the death of the rabbit, the petitioner alleged that the respondent was continuing to violate Section 17(B) of the declaration of condominium by obtaining a bird during the pendency of the underlying case. The summary final order determined that the bird did not constitute a violation of the declaration. Therefore, the respondent prevailed on that issue.

The petitioner's counsel, JoAnn Nesta Burnett, Esquire, charged the association $150 per hour for her legal services. Counsel has been licensed to practice law in the State of Florida since 1997 and has experience in the area of condominium law. The rate of $150 per hour does not exceed the rate customarily charged in similar cases by attorneys with similar experience9. Therefore, the petitioner will be compensated at the rate of $150 per hour.

The petitioner seeks recovery for 18.5 hours of legal services. The January 27, 2000, and February 9, 2000, entries on the petitioner's billing statement, totaling 1.8 hours, predate the drafting of the petition and are denied because these activities occurred prior to the drafting and filing of the petition for arbitration. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable). The entries between the dates of February 21, 2000, and July 14, 2000, totaling 7.5 hours, reflect reasonable expenditures of time to litigate this case and will be awarded. All entries on the petitioner's counsel's billing statement

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9 Petitioner's counsel's billing statement shows that one of the entries for .5 hour was billed at $185 per hour. The entry was not distinguished nor was justification given for the different rate.

that are dated after July 14, 2000, occurred after the issue on which the petitioner prevailed had become moot; consequently, they are not recoverable, with the exception of 1 hour for preparation of the motion for attorney's fees and costs. Thus, the petitioner is awarded $1,275 (8.5 hours at $150 per hour) in attorney's fees. In addition, the petitioner requests compensation for the $50 filing fee. This cost is recoverable and will be awarded. Therefore, the petitioner is entitled to $1,325 in prevailing party attorney's fees and costs.

Prince A. Donnahoe IV, Esquire, represented the respondent in this matter and charged $200 per hour for his legal services. Counsel has been licensed to practice law in the State of Florida since 1995 and has experience in the area of condominium law. The rate of $200 per hour exceeds the rate customarily charged in similar cases by attorneys with similar experience. Therefore, the respondent will be compensated at the rate of $150 per hour for counsel's legal services.

The respondent seeks recovery for 11 hours of legal services. All of the entries on the respondent's billing statement that occurred after the filing of the Petitioner's Response to Arbitrator's Order to Show Cause, totaling 4.5 hours, are recoverable, because at that point the respondent began her successful defense against the petitioner's allegation that the respondent's bird violated Section 17(B) of the declaration of condominium. Therefore, the respondent is awarded $675 ($150 per hour for 4.5 hours) in prevailing party attorney's fees.

It is therefore ORDERED:

1. The petitioner's motion for attorney's fees and costs is GRANTED in part.

2. The respondent shall pay the sum of $1,325 to the petitioner within thirty days of the date of entry of this order.

3. The respondent's motion for attorney's fees is GRANTED in part.

4. The petitioner shall pay the sum of $675 to the respondent within thirty days of the date of entry of this order.

DONE AND ORDERED this 26th day of April 2001, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

Pursuant to section 718.1255, Florida Statutes, this decision shall be binding on the parties unless a complaint for trial *de novo* is filed by an adversely affected party in a court of competent jurisdiction in the circuit in which the condominium is located within 30 days of the date of mailing of this order. This final order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Joann Nesta Burnett, Esquire, Becker & Poliakoff, P.A., 3111 Stirling Road, Fort Lauderdale, FL 33312 and Prince A. Donnahoe IV, Esquire, Prince A. Donnahoe IV, P.A., 1410 SW 29th Avenue, Pompano Beach, FL 33069, this 26th day of April 2001.

_____

Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE GARDENS AT PEMBROKE LAKES
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 01-2368
Rel. Case No. 00-1594

MICHAEL CLEMENTI and
ROSE AIGLIO CLEMENTI,

Respondents.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

The underlying case arose when the association filed a petition on September 8, 2000, complaining that the respondents were maintaining a dog in their unit in violation of the condominium documents. The dispute was resolved when the respondents removed the dog. Subsequently, the petitioner filed a timely motion for an award of prevailing party attorney's fees and costs totaling $1190.

The respondents contest the fees motion on grounds that 1) the respondents' offer of judgment precludes an award of attorney's fees; 2) the petitioner was not a prevailing party because the petition was dismissed as moot; 3) the fee is excessive for the amount of work needed in this case; and 4) the petitioner failed to attach any receipts supporting the award of costs in violation of Rule 61B-45.048(d), Florida Administrative Code.

The respondents assert that they removed the dog, and offered to permanently remove the dog

in an attempt at settlement, or an offer of judgment. They assert that the petitioner is accordingly not entitled to reimbursement of its attorney's fees. For cases in which the petition was filed subsequent to October 1, 1997, Section 718.1255(4)(k), Florida Statutes, provides that "[t]he prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees, in an amount determined by the arbitrator." (emphasis supplied) Neither the statute, nor Rule 61B-45.048, Florida Administrative Code, nor previous arbitration cases based on the current statute, provides an exception for cases in which an offer of judgment has been made.

The respondents argue that because the petition was dismissed as moot after the removal of the dog, the petitioner was not a prevailing party within the meaning of the law. A party is a prevailing party if it succeeds on a significant issue in the case and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So.2d 807 (Fla. 1992). Prevailing party status may also be found if the legal action is the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law. 51 Island Way Condominium Association, Inc. v. Williams, 458 So.2d 364 (Fla. 2nd DCA 1984); Hoffmeister v. Coler, 544 So.2d 1067 (Fla. 4th DCA 1989). A party may be a prevailing party even if the case is not resolved on the merits. Hall v. Dept. of Health & Rehabilitative Services, 409 So.2d 193 (Fla. 3rd DCA 1982). This proposition finds application where a case becomes moot when the opposing party voluntarily provides the relief sought in the action. 51 Island Way, supra; Suncrest Townhouse Condominium, Inc. v. Bottorff, Arb. Case No. 92-0177, Final Order (March 25, 1993).

In West Wind Estates Condominium Association, Inc. v. Becker, Arb. Case No. 94-0301F, Order on Motion for Attorney's Fees (Aug. 15, 1995), citing Hewitt v. Helms, 482 U.S. 756 (1986); Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. Ct. 1976), the arbitrator set forth the appropriate test for

determining the prevailing party where the arbitration petition is dismissed as moot:

> A party can be considered a "prevailing party", even though the case is moot, when (1) it has obtained the relief it sought in the arbitration or lawsuit; (2) the petition for arbitration or lawsuit was the catalyst that motivated the opposing party to take the action causing the case to become moot; and (3) the action taken by the opposing party was required by law.

The pleadings reflect that the association received the relief it sought, the removal of the dog. The pleadings also indicate that the petition for arbitration was the catalyst that motivated the removal of the dog. Finally, the condominium documents clearly prohibit dogs; accordingly, the respondents' action was required by law. The petitioner is accordingly the prevailing party in this case.

A dismissal for mootness will preclude the award of prevailing party attorney fees to the petitioner where the petition is dismissed as having been moot when filed. The record does not clearly reflect when the dog was initially removed from the premises, but the petitioner's unrebutted assertions reflect that the respondents had at least once returned the dog after having purportedly removed it; moreover, in their answer to the petition they attacked the validity and applicability of the prohibition on dogs rather than agreeing that they were in violation of a valid provision of the condominium documents. The petition was therefore not shown to have been moot when filed; rather, the filing was a legitimate exercise by the association to enforce the provisions of its documents.

The petitioner in this case is unquestionably the prevailing party; consequently, the petitioner will be awarded its reasonable fees and costs pursuant to the statute and Rule 61B-45.048, Florida Administrative Code. Fees incurred “in the arbitration proceeding" are fees incurred beginning with the drafting of the petition for arbitration proceeding. Once the time frame of the proceeding has been ascertained, the reasonableness of the fees claimed during that time must be examined.

As stated by the court in Centrex-Rooney Construction Co. Inc. v. Martin County, 725 So. 2d 1255 (Fla. 4th DCA 1999):

> In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. "This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the trial court must consider separately the reasonableness of the hourly rate and the number of hours reasonably expended. See, Rowe, 472 So. 2d at 1150-51.
>
> "Reasonably expended" means the time that ordinarily would be spent by lawyers in the community to resolve this particular type of dispute. It is *not* necessarily the number of hours actually expended by counsel in the case. Rather, the court must consider the number of hours that should reasonably have been expended in that particular case….In this respect, the magnitude of the case should be a consideration. In re Estate of Platt, 586 So. 2d 328, 333-4 (Fla. 1991) (emphasis in original). In determining the reasonableness of attorney's fees, the court should utilize the following criteria:
>
> (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
>
> (3) The fee customarily charged in the locality for similar services.
>
> (4) The amount involved and the results obtained.
>
> (5) The time limitation imposed….
>
> (6) The nature and length of the professional relationship….
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
>
> (8) Whether the fee is fixed or contingent.

The motion for attorney's fees and costs requests an award of $1140 in fees. The motion also noted an anticipated .6 hour for receiving and responding to the respondent's pleading, but as the

petitioner has not replied to the respondents' pleading, the .6 hour is not awarded. The affidavit filed in support of the motion reflects that the petitioner's counsel is compensated at a rate of $150 per hour and that he has practiced law for fifteen years. The requested rate is not in excess of the rate customarily awarded to attorneys of similar experience, reputation, and ability. Based on the foregoing authorities and considerations, the petitioner will be compensated at the rate of $150 per hour. The affidavit filed in support of the motion reflects a total of 7.6 hours spent in prosecution of this claim. The hours claimed are not excessive considering the nature and scope of the issues, or the respondents' pleadings.

The respondents also assert that the petitioner failed to attach a receipt supporting the award of costs. The sole cost for which reimbursement is requested is the $50 filing fee required by the Division. No receipt for this cost is required because the arbitrator's file contains a photocopy of the petitioner's check. The cost was necessary in order to file the petition, and it is awarded.

The petitioner is awarded 7.6 hours of its attorney's time at a rate of $150 per hour, for a total of $1140. The cost of the $50 filing fee for arbitration is also awarded.

ACCORDINGLY, IT IS ORDERED:

The petitioner's total recovery is $1190, which sum the respondents shall pay to the petitioner within 30 days of the date of issuance of this order.

DONE AND ORDERED the 21st day of March 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept of Business and Professional Regulation
ARBITRATION SECTION
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order

by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Kenneth E. Zeilberger, Esq., at Kaye & Roger, PA, 6261 NW 6th Way Ste 103, Ft Lauderdale, FL 33309, and to David B. Haber, Esq., at Pertnoy Solowky Allen & Haber, PA, Museum Tower, Ste 2000,150 W. Flagler St, Miami, FL 33130 on this the 21st day of March 2001.

_____
Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Antonio Martinez et al.,

Petitioners,

v. **Fee Case No. 01-2471**
Rel. Case No. 00-1877

The Village Condominium Association, Inc.,

Respondent.
_____/

FINAL ORDER DENYING MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

In the case below, arbitration case no. 00-1877, petitioners filed their petition for arbitration on November 6, 2000, seeking to overturn an election that occurred on March 11, 2000. By the time that the association timely filed its answer on December 7, 2000, the association was preparing to send out its first notice of election scheduled for March 12, 2001. The arbitrator upon notice issued a final order dismissing the petition as moot, finding that there was no practical way to decide the dispute prior to the conduct of the next election that would render the instant dispute moot.

Petitioners subsequently filed their motion for attorney's fees on February 12, 2001, claiming that they prevailed in the case and seeking to recover $3,500.00 in attorney's fees and costs. In its response filed on March 7, 2001, the association

denied that petitioners prevailed in the action below. It is necessary to determine whether petitioners prevailed in their election challenge.

A party is a prevailing party if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla. 1992). A party may also be a prevailing party even if the action is not resolved on the merits. Hall v. Dept. of Health & Rehabilitative Services, 409 So. 2d 193 (Fla. 3rd DCA 1982). This applies when a case becomes moot because the opposing party voluntarily provided the relief sought in the action. Prevailing party status may thus be found if the filing of the petition for arbitration was the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law. 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 364 (Fla. 2nd DCA 1984); Hoffmeister v. Coler, 544 So. 2d 1067 (Fla. 4th DCA 1989).

In the instant case, the arbitrator did not enter an order providing petitioners with the relief requested; neither did the association provide petitioners with any of the relief sought. The case was anticipatorily moot nearly upon its filing; no relief was accomplished by the petitioners. The arbitration cases that have found a prevailing party to exist in the face of mootness of the petition invariably involved mootness caused where the respondent voluntarily provided the relief requested after the filing of the petition, which relief was determined to be required by law.10 Where, on the other

10 See, for example, Dadeland Park Condominium Association, Inc. v. Burey-Jacas, Arb. Case No. 99-1927, Final Order (February 28, 2000); Eastfield Slopes Condominium Association, Inc. v.

hand, the petition was found to be moot because the relief was provided prior to the filing of the petition, no prevailing party fees are properly awarded because the relief provided could not have been provided in response to the filing of the petition.11 Where the relief requested has been provided subsequent to the filing of the petition, and where therefore the dispute is rendered moot, fees have not been awarded where the respondent asserted viable defenses and provided the relief requested for reasons unrelated to the filing of the petition.12

In sum, based on the foregoing, there is no basis for awarding prevailing party costs and attorney's fees. The association did not supply any relief requested in the petition and the petition was dismissed for mootness for reasons unrelated to the actions of the parties. The motion for recovery of costs and attorney's fees is therefore denied.

DONE AND ORDERED this 4th day of May, 2001, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street

Tolliver, Arb. Case No. 98-5475, Final Order (January 28, 1999).

11 See, for example, Crossfox Condominium Association, Inc. v. Dyer, Arb. Case No. 93-0382F, Final Order (March 2, 1994).

12 See, for example, French Villas of Lighthouse Point Condominium Association, Inc. v. Soltanpanah, Arb. Case No. 99-1028, Final Order (December 3, 1999), wherein the arbitrator denied fees where the owners/respondents denied each allegation in the petition and sold the unit for reasons unrelated to the filing of the petition.

Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent via U.S. Mail to the following persons on this 4th day of May 2001: John A. Leklem, Esquire, 15 South Magnolia Avenue, Orlando, Florida 32801, and to Chris Alan Draper, Esquire, Becker & Poliakoff, P.A., 500 Winderley Place, Suite 104, Maitland, Florida 32751.

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

In accordance with s. 718.1255, F.S., this final order may be appealed to a court of competent jurisdiction in the circuit in which the condominium is located by filing a petition for trial de novo within 30 days of the issuance and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

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

IN RE: PETITION FOR ARBITRATION

Royal Park Condominium Apartments, Inc.,

Petitioner,

v. **Fee Case No. 01-2516**
Rel. Case No. 00-1600

Patti Lynn,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for award of attorney's fees in this matter on February 23, 2001, seeking an award of $6,662.50 in attorney's fees and $690.95 in costs. Respondent Patti Lynn subsequently filed a petition for trial de novo, and this fees proceeding was abated. The association filed a copy of a court order on September 14, 2001, indicating that the appeal was dismissed, and this proceeding was resumed. The association on October 15, 2001, filed a supplemental motion for costs and attorney's fees, seeking recovery of those additional fees and costs incurred between the filing of its original motion for fees and the time of the filing of the second motion, in the amount of $2,887.00.

It is necessary to summarize certain aspects of the proceeding below in order to address the questions presented in this fees proceeding. The case below, case no. 00-1600, began on September 11, 2000, when the association filed its petition for arbitration against Patti Lynn. The petition alleged that the respondent had failed to place an identifying parking sticker on her windshield as required by the rules of the association. The association requested entry of a final order requiring respondent to affix an identifying sticker to her windshield. Respondent's answer asserted that due to her small physical size, the placement of the sticker on her windshield would obscure her ability to see out of the windshield. Respondent also asserted that the sticker policy violated certain portions of the vehicle code contained in Ch. 316, F.S. Respondent further argued that the association was failing to enforce the sticker policy uniformly, and that the rules were otherwise invalid. Respondent asked to be permitted to place the identifying sticker on her dashboard instead of the windshield. In its response to the answer, the association indicated that it would be permissible for respondent to place the sticker at the top of the windshield instead of the bottom of the windshield where it had previously indicated that placement should occur.

A final order was entered on January 30, 2001. The final order found that the policy of the association of requiring parking stickers was reasonable and that the association was pursuing legitimate objectives. The final order found that the association had a strong interest in monitoring and controlling persons entering the premises, and concluded that:

> The sticker policy, operating in conjunction with a gated security, enhances the ability of the association to provide security and protection to the residents, and may offer the association the ability to exclude persons who might pose a risk to the personal safety and property interests of the residents and of the association. In addition, the sticker policy better enables the association to enforce the rental restrictions contained in the documents.

The final order next examined the issue of whether the means chosen by the association to accomplish its stated purposes were reasonably related to the objectives sought to be advanced. First, the final order found that the sticker policy on its face did not violate the vehicle code. Next, concerning placement of the sticker, the arbitrator stated that an association rule that required affixing a large sticker to the windshield in a manner shown to obscure a driver's vision would be beyond the authority of the association:

> If it is shown in a particular instance that enforcement of the rule will lead to arbitrary or unreasonable results, the association is required to temper its enforcement effort to avoid these results. For example, if the placement and size of a sticker obscures the vision of those residents having a diminutive stature, the association is required to exhibit flexibility in its administration of the vehicle identification program and should permit alternate placement or the use of substitute bumper or dashboard displays.

The arbitrator found, based on photographs submitted by respondent, that placement of the sticker measuring 3 inches square in the area designated by the association for customary placement on the lower region of the windshield:

> …results in a barrier to the respondent's effective field of vision, thereby potentially jeopardizing the safety of both the respondent and persons in proximity to the respondent's car, such as the grocery store employee pushing a cart illustrated in the photograph designated as Exhibit A. As

> such, the association is required to offer an alternative accommodation to the respondent. The association has done so. It has not been shown that the alternative offered by the association in this case is unreasonable.

Next, the arbitrator rejected respondent's selective enforcement claim. Other violations proffered by respondent were not found to be comparable. Additionally, as to some potentially comparable violations, the arbitrator found that respondent had failed to produce evidence linking the vehicles to any particular owner, tenant, visitor, or workman.

The final order concluded as follows:

> WHEREFORE, based on the foregoing, the respondent is not found to have violated the rule, paragraph 2, but is found to have violated the decal policy of the association. The respondent is ordered to comply with the parking sticker policy and shall affix the sticker in some place as designated by the association in its exercise of sound business judgement, other than placement at the bottom driver's side portion of the windshield, which might include the bumper, the forward portion of the side view mirror on the driver's side, the uppermost portion of the windshield, or some other place.

The parties disagree on whether the association is the prevailing party. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The petitioner is deemed to be the prevailing party since it achieved the result it sought. The defenses asserted by respondent were disproved or rejected, including selective enforcement, the asserted inconsistency of the rule

with the Florida Statutes, and the reasonableness and validity of the parking policy. While on its face it may appear that the association did not become entitled to place the parking sticker on the precise area of the windshield originally desired, the outcome of the case was the entry of a final order upholding the policy and requiring the respondent to place the sticker at some windshield location chosen within the discretion of the association. As such, the association is held to be the prevailing party and is entitled to recover its reasonable costs and attorney's fees pursuant to Section 718.1255(4)(k), Florida Statutes.

Reasonable Hourly Fee

The association had 3 lawyers, one paralegal, and one law clerk working on this case. The lawyers billed out at variable rates ranging from $125 to $200 per hour, with some of the attorneys individually billing at variable rates within the case. For example, the attorney who performed the bulk of the work is shown to have charged in the range of $185 to $200 per hour. The motions for costs and attorney's fees do not present information on how long each attorney has been admitted to the bar although the Florida Bar website indicates that the two attorneys performing the most work in the case were admitted to the Florida Bar in 1993 and 1991. There is also no affidavit supplied attesting to the reasonableness of the fees incurred or demonstrating the individual qualifications and expertise of counsel. Given these considerations, the sum of $200 per hour exceeds the rate customarily charged by attorneys with similar experience practicing in the area in which the condominium is located, appearing in

arbitration proceedings conducted under Ch. 718, Florida Statutes. In lieu of the $200 per hour figure, the arbitrator sets hourly fees for these 2 attorneys to be $175 per hour. The hourly figure of $125 for the third attorney is accepted as reasonable. The paralegal fee of $85 per hour is reasonable as is the law clerk fee of $50 per hour.

Original Motion for Costs and Attorney's Fees

The original motion for costs and attorney's fees requests a total award of $7,353.45. The only costs and fees that the prevailing party is allowed to recover are those incurred *in the arbitration proceeding*. Section 718.1255(4)(k), Florida Statutes. Fees generated in a companion circuit court suit, fees incurred in the course of an appeal, and fees incurred prior the commencement of the arbitration proceeding are not incurred *in the arbitration proceeding* and will not be awarded. See, Bayview Condominium Association, Inc. v. Helmstetter, Arb. Case No. 98-4354, Final Order (December 3, 1998) (fees incurred in prior circuit court action and on appeal were not incurred in the arbitration proceeding and are not recoverable in the arbitration proceeding); Aspenwood at Grenelefe Condominium Association, Inc. v. Schifano, Arb. Case No. 95-0119F, Final Order (arbitrator is without authority to award fees incurred in the course of a trial de novo unless specifically directed to do so by the presiding judge); Big Pass Association, Inc. v. Aaron, Arb. Case No. 95-0305F, Final Order (October 31, 1995) (attorney's fees would not be awarded for time spent in circuit court proceeding predating the arbitration proceeding, or for time spent in matters relating to both the arbitration and the court proceeding).

Based on the foregoing, the first entry that demonstrates eligibility for an award of fees and costs corresponds to August 28, 2000, when the drafting of the petition for arbitration was commenced. The circuit court activity shown between June 21, 2000 and August 23, 2000, related to the court action and not the arbitration proceeding and is disallowed.

Between August 28 and September 7, 2000, the paralegal spent 4.2 hours working on the petition for arbitration and the primary attorney on the case spent 2.1 hours preparing the petition. Except for filling in the blanks, the request for relief and the one sentence describing the dispute are all that was undertaken for completion of the petition along with assembling the attachments to the petition. The arbitrator finds that a reasonable recovery for preparing the petition would be two hours of attorney time and 2 hours of paralegal time.

The primary attorney spent .80 hour on September 15 reviewing an order requiring the respondent to file additional information. A reasonable recovery for this exercise is .30 hour.

The entries for September 28 are found to be reasonable, as are the entries for October 4 and 5, November 29, December 6, 2000, and January 24, 2001.

On October 11, 2000, the primary attorney on the case spent .60 hour regarding the order requiring answer directed to the respondent. This amount is reduced to .20 hour.

Between November 13 and November 22, 2000, counsel spent 7.7 hours

preparing a reply to the answer of the respondent; the paralegal spent 9.1 hours assisting in this regard. The arbitrator finds that 4.5 hours of attorney time would have been a reasonable charge for this exercise along with 4.5 hours of paralegal time.

Between December 11, 2000 and January 11, 2001, the attorney spent .60 hour on petitioner's supplemental reply and the paralegal spent 2.2 hours. These activities are found to be reasonable and will be awarded. The association is awarded during this period 8.8 hours of attorney time billed at $175, or $1,540.00

For costs during this period, the association claims $690.95. There was no exhibit B which is said to have summarized the costs and the arbitrator is only able to look at the billing and activity sheets to attempt to ascertain costs. The expenses for photocopies and telecopying are ordinary office expenses and are not recoverable. The filing fee of $50 is awarded. The service of process fee must relate to the circuit court action as respondent was served in this matter via certified mail. Allowed paralegal costs during this period include 10 hours of paralegal time billed at $85.00 per hour, or $850.00

The supplemental motion for fees covers the period February 5, 2001 through October 10, 2001. The final order in the underlying case was issued on January 30, 2001. The entries for review of the final order on February 5, 2001 are awarded. Between February 14 and February 19, counsel spent 3.9 hours preparing his motion for attorney's fees and the paralegal spent 3.5 hours. It is concluded that a fair and reasonable recovery for these services are 2 hours for the attorney and 2 hours for the

paralegal.

The entries for February 23 and 26 relate to filing a petition to enforce the arbitration order in court. These services were not performed in the arbitration proceeding and are disallowed.

The paralegal spent .20 hours faxing to the client the respondent's request for clarification on February 27; this entry is permitted as is the March 1 entry for the paralegal in the amount of .30 hour.

The primary attorney spent 3.5 hours on research relating to the prevailing party issue on February 27 and February 28. This is reasonable and is awarded. The activities reported by the two attorneys for March 5 also relate to this issue and are also allowed in the amount of 5.30 and .70 hours.

The primary attorney spent .80 hours on March 2, 2001, reviewing the petition for trial de novo filed by respondent with the court. This activity was not undertaken in the arbitration proceeding and is disallowed as is the March 6 entry. The March 7 entry also related to the appeal and is disallowed. All of the activities reported from March 8 through and including July 30, 2001 report activities undertaken in the appeal by trial de novo and are disallowed, with the exception of the activities undertaken on June 21 for which 1.50 hours is allowed.

In sum, for the period covered by the supplemental motion, the association is awarded 2.7 hours of paralegal time at $85.00 per hour, or $229.50, plus 11.5 hours billed at $175, or $2,012.50, and .70 hour billed at $135.00 per hour, for a total

recovery of $2,336.50. No recoverable costs are awarded for the period of time covered by the supplemental motion.

WHEREFORE, the arbitrator awards the association the total amount of $2,336.50 from the supplemental motion, $850.00 in paralegal costs from the original motion, the $50.00 filing fee, and $1,530.00 in attorney's fees from the original motion, for a grand total of $3,389.50. Respondent shall pay this amount to the association within 14 days of the date of this final order.

DONE AND ORDERED this 18th day of December, 2001, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 18th day of November, 2001:

Paul O. Lopez, Esquire
Tripp Scott, P.A.
110 S.E. 6th Street, 15th Floor
Ft. Lauderdale, Florida 33301

Patti Lynn
112 Royal Park Drive, # 1A

Oakland Park, Florida 33309

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

PINE ISLAND RIDGE
CONDOMINIUM G, INC.,

Petitioner,

v. Fee Case No. 01-2520
Rel. Case No. 00-1712

JAMES FAUGNO,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEE AND COSTS

The petitioner filed a motion seeking recovery of attorney's fees as more fully described in documents filed along with the settlement agreement. The respondent did not reply to the motion.

This fees case arises from Arbitration Case Number 00-1712. That case was settled. The settlement included the respondent's agreement to be liable for the association's costs and legal fees.

The petitioner seeks reimbursement for 3.2 hours of its counsel's time at the rate of $200 per hour. The time records showing petitioner's activities reflect reasonable and necessary expenditures of time. With regard to the rate requested, petitioner's counsel has practiced law in this state for more than 27 years and is knowledgeable in the field of condominium law. The rate

requested is not excessive and is awarded.

The cost for which the association seeks reimbursement is the $50 filing fee, which is compensable.

ACCORDINGLY, IT IS ORDERED:

Within 30 days of the date of this order the respondent shall pay to the petitioner $690 in reimbursement of its attorney's fees and costs.

DONE AND ORDERED this 27th day of July 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Jerome R. Schechter Esq. at Jerome R Schechter PA, 315 S E 7th St First Floor, Ft Lauderdale FL 33301 and to James Faugno at 9420 Poinciana Pl #105 Fort Lauderdale FL 33324 on this the 27th day of July 2001.

_____

Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

HERBERT S. ROSE,

Petitioner,

v.

Fee Case No. 01-2661
Rel. Case No. 00-1996

THE VILLAGE OF KINGS CREEK
CONDOMINIUM ASSOCIATION, INC.
and ASTRID BUTTARI, President,

Respondents.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On March 22, 2001, Herbert S. Rose (petitioner or Rose) filed a motion for award of attorney's fees and costs in the amount of $5,110.00. The requested fees and costs arise from arbitration case no. 00-1996. On April 30, 2001, The Village of Kings Creek Condominium Association, Inc. (association) and Astrid Buttari (Buttari) filed their motion for attorney's fees in the amount of $2,759.00.

The petition in the underlying arbitration was filed on November 30, 2000, and concerned the impending election of directors scheduled for December 13, 2000. The petition alleged that the association altered the petitioner's candidate information sheet, permitted certain candidates (specifically association president Buttari) to use a two-page candidate information sheet, and employed a confusing ballot. As relief, Rose sought an order requiring the association to correct his candidate information sheet, and disqualify all candidates who used two-page information

sheets.

A final order was entered on March 14, 2001. The final order did not determine whether the unsightly and extraneous lines and markings on the petitioner's information sheet appeared on the copies distributed to unit owners or whether the association was responsible for them. The order held that, assuming the marks were there, "this is not the type of activity proscribed" by the applicable administrative rule. The order determined that by permitting some candidates to use two-page information sheets, the association violated Section 718.112(2)(d)3., Florida Statutes, that limits the size of the sheet to 8½ x 11 inches, and Rule 61B-23.0021, Florida Administrative Code, that states that the information contained on the sheet shall not exceed one side of 8½ x 11 inch sheet. The association was ordered in the future to comply with the Condominium Act and division rules limiting the size of candidate information sheets distributed by the association.

Pursuant to Section 718.1255(4)(k), Florida Statutes (2000), the prevailing party shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla. 1992). The petitioner succeeded in obtaining a determination that the association failed to properly conduct its election in December 2000 and an order requiring the association to adhere in the future to the requirements of the division's rules and the Condominium Act. Obviously, the petitioner obtained some, although not all, of the benefits he sought by bringing this action. Accordingly, it is determined that the petitioner prevailed in this case.

The petitioner is an attorney and represented himself. He seeks attorney's fees for his time. The arbitrator has reviewed his time records and finds that 14.10 hours was reasonably

spent prosecuting this case. The disallowed services include time spent prior to the filing of the petition, See Loveland, et al. v. Harbor Towers and Marina Condo. Assn., Inc., Arb. Case No. 00-0067, Final Order on Requests for Attorney's Fees (March 23, 2000) (fees incurred "in the arbitration proceeding," with reference to a prevailing petitioner, refers to fees incurred beginning with the drafting of the petition). Also disallowed are 1.25 hours spent correcting pleadings and 1.25 hours spent drafting a motion for hearing and/or clarification that was groundless. The petitioner seeks fees at the rate of $200.00 per hour; $150.00 is reasonable for the services rendered, however, as the petitioner has not provided any information to support his being paid more than other attorneys with similar experience who practice in the Miami area. The total amount of attorney's fees to petitioner is $2,115 (14.10 hours at $150/hour).

The association argues that the plaintiff should not be awarded attorney's fees for his own services, citing Kay v. Ehrler, 499 U.S. 432 (1991) ("A rule that authorizes awards of counsel fees to pro se litigants—even if limited to those who are members of the bar—would create a disincentive to employ counsel whenever a plaintiff considered himself competent to litigate on his own behalf. The statutory policy of furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel in every such case.") and Ray v. United States Dept. of Justice, 856 F. Supp 1576 (S.D. Fla 1994), in which the court denied attorney's fees to a successful pro se attorney-plaintiff under Freedom of Information Act.

Kay involved a civil rights action pursuant to 42 USCS 1988, which authorizes awards of reasonable attorneys' fees to prevailing parties in certain civil rights actions. The court denied an award because it found that the specific purpose for authorizing attorney's fees pursuant to the statute was "to enable potential plaintiffs to obtain the assistance of competent counsel in

vindicating their rights…to ensur[e] the effective prosecution of meritorious claims." The court noted that even a skilled layer who represents himself is at a disadvantage and reiterated the adage that "a lawyer who represents himself has a fool for a client;" thus, the purpose of ensuring competent counsel in civil rights cases was better met by creating an incentive for litigants to retain counsel in every case.

Ray involved a claim under the Freedom of Information Act. The court noted that the purpose of the fee provision of the FOIA is the same as that of 42 USCS 1988, and denied an award of attorney's fees to the successful attorney/plaintiff.

As originally enacted, the law creating the condominium arbitration program provided that an award of attorney's fees to the prevailing party was within the discretion of the arbitrator. The law recognized that unit owners are at a disadvantage in litigating against a condominium or cooperative association with its power to assess all owners for legal fees, however, and the division adopted a rule providing that a prevailing unit owner was more likely than an association to be awarded prevailing party costs and attorney's fees (See Rule 7D-45.048(8), Florida Administrative Code (1993)). Attorney's fees were awarded to a prevailing association only when the unit owner's claim was frivolous, or it was pursued in a vexatious manner. Section 718.1255, Florida Statutes, was amended in 1997 to make an award of attorney's fees to the prevailing party **mandatory.**

Presumably, the purpose of the current attorney's fees provision contained in Section 718.1255, Florida Statutes, is to make the prevailing party whole, rather than to ensure independent counsel or to further the successful prosecution of meritorious claims. Given the fact that the purpose of the statute is not to promote the existence of a stable of willing attorneys

available to represent disadvantaged unit owners, but to make the petitioner whole, there is no justification for denying attorney's fees to the petitioner in this case.

The petitioner also seeks $50.00 in costs for the arbitration petition-filing fee, which is awarded. The total amount of attorney's fees and costs to be awarded to the petitioner is $2,165.00.

The association and Buttari also claim to have prevailed in this case. The petitioner's claim was that the association was not conducting the election properly. While he did not receive all of the relief he requested (in addition to an order requiring the association to distribute only one-page information sheets, he also sought an order requiring the association to correct his candidate information sheet, stop the election and disqualify all candidates who used two-page information sheets), overall he prevailed. Due to Rose's efforts, the association will not in the future distribute two-page candidate information sheets.

Based on the foregoing, it is ORDERED:

The respondents shall pay to petitioner Rose $2,165.00 in attorney's fees and costs within 30 days of the date of this order.

DONE AND ORDERED this 6th day of June 2001, at Tallahassee, Leon County, Florida.

_____

Patricia A. Draper, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Herbert S. Rose, Esq., P.O. Box 56-5834, Miami, FL 33256-5834 and Jed L. Frankel, Esq., Phillips, Eisinger, Koss, Rothstein & Rosenfeldt, P.A., 4000 Hollywood Boulevard, Suite 265 South, Hollywood, FL 33021 this the 6th day of June 2001.

_____

Patricia A. Draper, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

RIVERWOOD CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 01-2706
Rel. Case No. 00-0625

FRED A. SCHWARTZ,

Respondent.
_____/

ORDER DENYING MOTION FOR ATTORNEY'S FEES

On February 12, 2001, Fred A. Schwartz filed a motion for prevailing party attorney's fees. The motion relates to underlying arbitration case number 00-0625, the final order for which was entered on March 14, 2001. The fees motion accordingly became ripe for consideration on March 14.

The underlying action was dismissed following notice of impasse at mediation and a request to terminate arbitration. Section 718.1255(4)(h), Florida Statutes (2000) addresses recovery of attorney's fees and costs when an arbitration petition is dismissed after impasse at mediation; that section provides, in relevant part, as follows:

> If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction.

> The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

When a petition for arbitration is dismissed after impasse at mediation, the statute appears to require a party seeking an award of attorney's fees incurred in connection with the arbitration and mediation proceedings to seek such an award in court.

Accordingly, it is ORDERED: The motion for an award of prevailing party attorney's fees is DENIED.

DONE AND ORDERED this 11th day of April 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Steven A. Fein, Esq. at Fein & Meloni, 900 SW 40th Ave, Plantation, FL 33317 and to Michael E. Rehr, Esq., at Michael E. Rehr, PA, 75 Valencia Ave 4th Fl, Coral Gables, FL 33134, on this the 11th day of April 2001.

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Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE BARBADOS IV AT TARPON COVE
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 01-2843
Rel. Case No. 00-2017

BRENDA C. MAK,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On April 17, 2001, the Barbados IV at Tarpon Cove Condominium Association, Inc., the petitioner, moved for an award of $2,046.80 in attorney's fees and costs. An order permitting response to the motion was directed to the respondent, Brenda C. Mak, on April 26, 2001. As of the date of entry of this order, the respondent has not filed a response to the motion for attorney's fees.

In the underlying dispute, the petition alleged that the respondent was keeping two small dogs in her unit that were creating a nuisance and were unreasonably disturbing to other residents. As relief, the petitioner requested an order requiring the respondent to permanently remove her dogs. On March 13, 2001, a summary final order was entered requiring the respondent to permanently remove her dogs and not return them to the premises.

A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt

Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Because the respondent was ordered to permanently remove the dogs from the premises, the petitioner received the benefit it sought in bringing the action. Thus, the petitioner is the prevailing party.

Richard D. DeBoest II, Esquire, the petitioner's counsel, charged the association $160 per hour for 7.8 hours of his legal services and $170 per hour for 2.9 hours of his legal services. Counsel has been licensed to practice law in the State of Florida since 1993 and has significant experience in the area of condominium law. The rates requested do not exceed the rates customarily charged in similar cases by attorneys with similar experience. Therefore, the petitioner will be compensated at the requested rates

Counsel charged $85 per hour for 1.4 hours of services performed by his paralegal. The rate charged for paralegal services is within the range of the rates customarily charged, and the entries on the billing statement are all recoverable. Therefore, the petitioner is awarded $119 for paralegal services.

The petitioner seeks recovery for 10.7 hours for activities performed by counsel. A total of 3.7 hours of counsel's services predate the drafting of the petition. With the exception of 1 hour for provision of advance written notice of the dispute to the respondent as required by section 718.1255(4)(b), Florida Statutes, these entries are denied because the corresponding activities occurred prior to the drafting and filing of the petition for arbitration. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable).

The remaining entries on the billing statement reflect reasonable expenditures of time to litigate this case and will be awarded. Thus, the petitioner is awarded $1309 in attorney's fees - $816 (5.1 hours at $160 per hour) plus $493 (2.9 hours at $170 per hour).

> The petitioner requests compensation for the $50.00 filing fee, $71.80 in copies, $30.00 to effectuate service of process and $35.00 for Attorneys' Title Ins. Fund, for a total of $186 in costs. All of the costs except the $71.81 spent on photocopies are recoverable costs and will be awarded. See Bolton v. Bolton, 412 So. 2d 72, 73 (Fla. 2nd DCA 1982)(routine office expenses are not recoverable as costs). Therefore, the petitioner is awarded $115.00 in costs

It is therefore ORDERED:

1. The petitioner's motion for attorney's fees and costs is GRANTED in part.

2. The respondent shall pay the sum of $1543 to the petitioner within thirty days of the date of this order.

DONE AND ORDERED this 5th day of June 2001, at Tallahassee, Leon County, Florida.

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Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

Pursuant to section 718.1255, Florida Statutes, this decision shall be binding on the parties unless a complaint for trial *de novo* is filed by an adversely affected party in a court of competent jurisdiction in the circuit in which the condominium is located within 30 days of the date of mailing of this order. This final order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Richard D. DeBoest II, Esquire, Roetzel & Andress, L.P.A., 2320 First Street, Suite 1000, Ft. Myers, FL 33901 and Brenda C. Mak, 784 Carrick Bend Circle, #201, Naples, FL 34110, this 5th day of June 2001.

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Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

OMNI BAY HOUSE CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 01-3252
Rel. Case No. 00-2107

BILL ALDANAS,

Respondent.
_____/

FINAL ORDER AWARDING COSTS IN PART

The petitioner, who was not represented by an attorney in the underlying action, seeks an award of $773.05 as prevailing party costs of arbitration. That total includes fees for the services of Lorna Shufford; costs of obtaining a copy of the by-laws from the Clerk of the Court; gasoline; costs to purchase and develop film; costs of certified mail; other costs of mailing; costs of running a fax machine; and small miscellaneous office-type supplies.

The services of Lorna Shufford have been variously descried as consulting and as translating. Mr. Aldanas, when asked to clarify this person's role, stated that she guided him through the case and prepared to act as a translator at the hearing, in that she was expected to break down words to the respondent's level. These are the services of a paralegal, or a consultant, not of a translator. In any case, translation of English to English would not have been necessary or permitted at the hearing. Paralegal services may be compensable where the

services are specifically documented as non-clerical, meaningful legal work done under the supervision of an attorney, but Ms. Shufford's work was not so documented or described. Services performed by a non-attorney consultant who files documents as the party's representative, services are not compensable. Estes and Alderman v. Lido of Pinellas Condominium Association, Inc., Arb. Case No. 95-0421F, Final Order on Attorney's Fees (May 31, 1995). Mr. Aldanas is not awarded the cost of Lorna Shufford's consultation.

Mr. Aldanas claims $22 as his cost to obtain a copy of the by-laws from the clerk of the court. The petitioner protests that this was available from the petitioner. The petitioner has not contended that a copy was freely available to Mr. Aldanas from the petitioner at no cost or at a specified cost that was less than $22; accordingly the $22 is awarded.

The cost of the gasoline was not shown to be a reasonably necessary cost of The respondent's defense and it is not awarded.

Mr. Aldanas claims a total of $64.96 in costs to obtain and develop photographs as evidence to be used at the hearing. Mr. Aldanas submitted a large number of photographs to be used at the hearing, not all of which could possibly have been pertinent to the issues to be resolved at the hearing. Photographs purporting to show someone throwing trash into a public body of water or purporting to show an unlicensed contractor at work, for example, would not have been permitted as exhibits. On the other hand, photographs of vehicles might have played a significant part in the hearing. Mr. Aldanas is awarded one-half of the

cost claimed to obtain photographic evidence, or $32.48.

Expenses such as postage, supplies and faxing fees are normally not awarded as costs to the prevailing party, on grounds that they are ordinary office expenses that should be factored into the attorney's hourly rate rather than awarded separately as costs. In this case, however, the prevailing party had no attorney under whose fee these expenses should be subsumed.

The cost of certified mail or express mail has not been established to be reasonably necessary for the respondent's defense, and is not awarded. Mr. Aldanas is awarded a total of $8.93 for other costs of postage.

The use of the fax machine was not established to be reasonably necessary for the respondent's defense, and the cost of repairing or maintaining it and obtaining supplies for it is not awarded.

For the remainder of the small office type supplies, Mr. Aldanas is awarded $10.76.

Accordingly, it is ordered:

Within 15 days of the date of this order, the association shall remit to $74.17 to Mr. Aldanas.

DONE AND ORDERED this 27th day of August, 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator
Dept. of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT OF APPEAL

In accordance with Section 718.1255, Florida Statutes, a party adversely affected by this final order may appeal from the order by filing, within 30 days of entry and mailing of the order, a complaint for trial de novo with a court of competent jurisdiction within the circuit in which the condominium is located. This order does not constitute final agency action and is not appealable to the district courts of appeal.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Steven M. Davis, Esq. at Becker & Poliakoff P.A., 5201 Blue Lagoon Dr Ste 100, Miami, FL 33126 and to Bill Aldanas at 701 N.E. 23rd St #304, Miami, FL 33137 on this the 27th day of August 2001.

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Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

John MacMillan,

Petitioner,

v. **Fee Case No. 01-3370**
Rel. Case No. 01-2747

Greenway Village South Management, Inc.,

Respondent.
_____/

SECOND AMENDED FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this second amended final order as follows:

The arbitrator issued the final order on costs and fees in this matter on July 29, 2001. It came to the attention of the arbitrator through correspondence from petitioner MacMillan received on January 7, 2002, that the final order contained certain inaccuracies. Specifically, the arbitrator awarded the $50 filing fee to the association when the owner was in fact the petitioner. In addition, petitioner complained that awarding the association attorney's fees for preparing a certain response to petitioner's motion for summary judgment was unwarranted. The arbitrator accordingly entered an amended final order on January 9, 2002. The arbitrator deducted from the amount owing by the petitioner, the $50 filing fee

and .50 hour billed at $185 per hour. The amount awarded to the association decreased from $1,141.50 in the original final order to $999 in the amended final order.

The association has recently protested the entry of the amended final order. The association points out that the time for rehearing of the final order and for an appeal from the original final order on attorney's fees had long since expired when the petitioner first began complaining about the final order. The association's point is well-taken. While the arbitrator has the authority on his own motion to correct what is an obvious error in a final order without regard to the time parameters set forth in the rules of procedure for motions for rehearing, portions of the final order not shown to be clearly erroneous should be left intact, absent a timely appeal or motion for rehearing. While it was clear error to award the filing fee of $50 to the respondent (who paid no filing fee), the other award challenged by the respondent was not clear error but implicated the discretion of the arbitrator. Arguments may be made on either side of the issue of whether recovery should be had for responding to the motion for summary judgment. In any event, it was petitioner's prerogative to raise this issue in a motion for rehearing or by appeal within the time provided for by statute and rule. Petitioner did not elect to do so, and must live with the final order, as amended to delete the clear error referenced above.

Accordingly, the arbitrator vacates the amended final order, and hereby issues this second amended final order. Respondent shall pay to the association

within 30 days hereof the sum of $999 plus .50 hour billed at $185 per hour ($92.50), for a total of $1,091.50.

The arbitrator will not entertain further motions or requests from the parties on this fees petition. If, as suggested by the parties themselves, the parties are engaged in continuing and protracted litigation yielding little apparent benefit to either side but consuming the time and monies of the parties and of all owners in the condominium, the parties should be admonished to settle their differences through mediation or informal settlement conference rather than performing a disservice to each other and to each member of the community in the form of increased antagonism and periodic special assessments to pay tall attorney's fees. "Principle" cases, however poetically depicted to suggest great fortitude and resolve, rarely evoke noble principles but instead suggest great inflexibility, unwavering intransigence, and total inconsideration, trapping as they do here unwary and untended victims in their widening web.

DONE AND ORDERED this 28th day of February, 2002, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. mail to the following persons on this 27th day of February, 2002:

Guy M. Shir, Esquire
Becker & Poliakoff, P.A.
500 Australian Avenue South
9th Floor
West Palm Beach, Florida 33401

Scott A. Stoloff, Esquire
St. John, Dicker, Caplan, et al., P.A.
500 Australian Ave South
Suite 600
West Palm Beach, Florida 33401

John MacMillian
12015 Greenway Circle South
Apt. #102
Royal Palm Beach, Florida 33411.

_____
Karl M. Scheuerman, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Leonard T. Accardi,

Petitioner,

v. **Fee Case No. 01-3447**
Rel. Case No. 00-0955

Leisure Beach South, Inc.,

Respondent.
_____/

FINAL ORDER ON MOTION TO CLARIFY THE RECORD

Comes now, the undersigned arbitrator, and enters this final order as follows:

The arbitrator entered the initial final order in this fees proceeding on October 25, 2001. The final order awarded the petitioner a total of $12,029.14. A reasonable hourly rate was set at $186.48 which represented a composite figure derived from the various hourly figures charged by different attorneys in counsel's office. The association on November 5, 2001 filed its motion for rehearing disputing the initial award of fees. A final order on motion for rehearing was entered on December 6, 2001 essentially denying the motion for rehearing and affirming the original award of fees.

On December 27, 2001, petitioner filed a motion for attorney's fees on rehearing, seeking an additional award for responding to the association's

motion for rehearing. The arbitrator awarded petitioner an additional $400 representing 2 hours billed at $200 per hour.

On January 17, 2002, petitioner filed his motion to clarify the record and re-affirm decision. Counsel indicated that his client was under a legal services contract and retainer agreement by which the agreed-upon hourly fee to be charged is set forth at $59 per hour. Petitioner sought entry of a final order affirming the original awards of costs and fees. The arbitrator issued an order permitting the association to respond to the motion. The parties filed numerous memoranda and reply memoranda, with the last being filed on March 11, 2002. The arbitrator has considered the various arguments made by the parties in the preparation of this final order.

In Sotolongo v. Brake, 616 So. 2d 413 (Fla. 1992), the Florida Supreme Court considered the issue of the reasonable payment of attorney's fees where the prevailing party and her attorney had entered into prepaid legal services plan agreement. The contract price was $60 per hour. The Court stated:

> ....We believe there can be no question that a general prepaid legal services contract of the type at issue here should be presumed to be reasonable. By accepting a fee schedule of this type, attorney necessarily agrees that the fee is customary and reasonable as to all persons included in the employer-sponsored prepaid legal services plan. The contract attorney thus is not entitled to a compensation over and above the amount specified in the legal services contract.
>
> However, we do believe there would be some situations in which a court could enhance the fee other than this type of prepaid legal services contract. Specifically, if a spouse alleges facts

> establishing that the fee was below the customary and reasonable rate charged for similarly situated clients because of that spouse's inferior economic status, then the burden shifts to the other spouse to disprove the allegation. The failure to disprove the allegation would justify the trial court in enhancing the fee to compensate for the reduction below the customary and reasonable rate.

In Independent Fire Insurance Company v. Lugassy, 609 So. 2d 51 (Fla. 1993), the Florida Supreme Court considered whether the parties were bound by a contingent fee agreement where, in the course of the trial, they changed the contract to an hourly fee arrangement. The Court noted:

> In making an award of attorney's fees under section 627.428, Florida Statutes (1991), the trial court is not free to exceed the fee agreement stipulated to by the prevailing party and his attorney. [citations omitted]. Although the parties were free to fashion an employment agreement which permitted the court to award a reasonable fee in excess of the contingency fee, [citations omitted], the parties' original agreement did not authorize a higher fee.

It is necessary to examine the fee arrangement entered into by the parties in this case. According to the agreement, the client and attorney agreed that the law firm's fees shall be based on an hourly rate of $59. The parties acknowledge that the law firm's customary rate is $200 per hour. The following provision appears in the agreement:

> Notwithstanding the attorney fee rates in this agreement, if the Court finds that an opposing party shall pay part or all of your attorney's fees and awards a reasonable fee and that fee is collected, the firm shall be entitled to the payment of his/her reasonable attorney's fees determined by the Court. Additionally, the client shall receive a proportionate

> credit for fees previously paid. It is further agreed that the terms of this agreement shall not limit any fee awarded by the Court.

Turning to the cases, under the Sotolongo case, it follows that by accepting a prepaid legal services agreement, counsel for the petitioner necessarily agreed that the fee of $59 per hour is customary and reasonable, and that the attorney is not entitled to compensation over and above the amount specified in the legal services contract. The Sololongo Court left open the door for enhanced fees under a prepaid legal services contract arrangement where the client can establish that fees called for under the agreement are below market rate because of the inferior bargaining position or economic status of the client. It has neither been alleged nor proven here that the petitioner has inferior bargaining position or diminished economic status. Lugassy involved a retainer agreement setting forth a contingency fee arrangement; the Court, although denying fees based on a revision to the arrangement unsupported by later consideration, suggested that parties are free to draft a retainer agreement calling for a higher fee if the attorney prevailed in the case. The parties here bargained for a $59 hourly fee, and accepted that fee as reasonable, but the retainer agreement does not end there. It provides the intent of the parties that the contract hourly figure does not bind a court in setting a reasonable hourly fee, and provides for a distribution of fees awarded in excess of the contract amount (to the attorney).

In the final analysis, the arbitrator finds that while the prepaid retainer

agreement sets forth what the client and attorney find to be a reasonable fee, the original agreement also provides for an enhancement factor if the Court determines that a reasonable hourly fee should be set in excess of the contract amount. Thus the expression of a reasonable base fee takes into account circumstances under which the parties agreed that the reasonable base fee could be expanded to include additional sums found reasonable by a court. Thus the intent of the parties in entering into the fee agreement, as determined by the terms thereof, is that the base hourly rate will serve as the basis for compensation paid by the client to the attorney, but reasonable fees under the contract will be adjusted should the client prevail in the litigation, leaving the court to determine under the terms of the agreement, a reasonable attorney's fees. This interpretation of the agreement serves the purpose of the prepaid legal services plan, which is to provide legal services to the client at the agreed upon rate. This has been fulfilled. The purpose of the agreement was not to benefit the opposing party in litigation by awarding below-market attorney's fees rates. The existence of the enhancement provision in the agreement belies this intent.

Having said this, counsel cannot escape the conclusion that by entering into the agreement, he was essentially agreeing that the contract rate of $59 is reasonable. Giving effect to this aspect of the agreement while considering that the sum of $150 an hour is the sum awarded most commonly for representation in these arbitration proceedings in the community in which the

condominium is located, and concluding that $59 per hour does not compare favorably with rates customarily charged for these services, the arbitrator concludes that petitioner should be compensated at the hourly rate of $150 per hour. Accordingly, the prior final orders are vacated to the extent inconsistent with this final order, and the petitioner is hereby awarded 72.85 hours of attorney work at the rate of $150 per hour ($10,927.50) plus costs of $153.60, less the 10% discount for the issues petitioner did not prevail upon, yielding a total recovery of $9,972.99. The association shall pay this amount to the petitioner within 20 days hereof for distribution in accordance with the terms of the retainer agreement. No motions seeking the further recovery of additional costs or attorney's fees shall be entertained by the arbitrator.

DONE AND ORDERED this 15th day of April, 2002, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North
Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 15th day of April,

2002:

Ronald S. Lieberman, Esquire
7951 SW 6th Street, Suite 200
Wellesly Corporate Plaza
Plantation, Florida 33324

JoAnn Nesta Burnette, Esquire
Becker & Poliakoff, P.A.
P.O. Box 9057
Ft. Lauderdale, Florida 33310-9057

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

Dennis and Dawn Warren,

Petitioners,

v. **Fee Case No. 01-3785**
Rel. Case Nos. 00-0177; 00-2153

Springwood Village Condominium Association of Longwood, Inc.,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Petitioners Dennis and Dawn Warren filed their motion for attorney's fees on October 4, 2001. The parties since that date have filed a series of responses, rebuttals, and responses to rebuttals, etc., such that the fees file is beginning to resemble the bulk of the files in the underlying arbitration proceeding. The request for fees encompasses work undertaken in arb. case nos. 00-0177 and 00-2153, as consolidated. In the case below, a final order on rehearing was entered on August 28, 2001. The order found that the association had willfully failed to provide access to the official records on 5 occasions in violation of the statute. The association was required to direct a check to the petitioners for

statutory damages in the amount of $2,500. The association was also required to provide timely access to the official records in the future. The association was further required to conduct its future elections in a manner consistent with the statute and rules. The association was further required[13] to update its unit owner roster and to provide an updated copy to the petitioners.

Section 718.1255, F.S., provides that the prevailing party in these arbitration proceedings is entitled to have the other party pay its reasonable costs and attorney's fees. The petitioners were the prevailing party below, having obtained the results or relief they sought in instituting the action below,[14] and are therefore entitled to recover their reasonable costs and attorney's fees from the association.

"In deciding upon an amount to be awarded as attorney's fees, a court should consider the nature of the services rendered and the necessity for their performance, together with the reasonableness of the charges." Brake v. Murphy, 736 So. 2d 745, 748 (Fla. 3rd DCA 1999), citing to College v. Bourne, 670 So. 2d 1118 (Fla. 5th DCA 1996). The Florida Supreme Court has offered the following guidance in calculating court-awarded attorney's fees, as set forth in Bell v. U.S.B. Acquisition Company, Inc., 734 So. 2d 403, 406 (Fla. 1999):

> ANALYSIS OF PRECEDENT
>
> We begin our analysis by examining our precedent concerning the guidelines for calculating court-awarded attorney fees. In Florida Patient's

13 Petitioners were also afforded relief in the partial summary final order entered in the case.
14 See, e.g., Wayne Paint Company v. Gulfview Apartments of Marco Island, 739 So. 2d

> Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), we first enunciated the factors to be utilized by a court in assessing "reasonable attorney fees." We noted the distinction between the "English Rule," that attorney fees are taxed to the losing party as part of costs, and the "American Rule," that attorney fees may be awarded by a court only when authorized by statute or agreement of the parties…"
>
> We defined an objective structure in Rowe. In calculating "reasonable fees," the trial court must determine the number of hours reasonably expended by the attorney and a reasonable hourly rate for those services, then multiply the two to arrive at the "lodestar" amount.... [W]e stated that the "novelty and difficulty of the question involved" should be considered in determining the number of hours reasonably expended on the litigation. Id. As to the second half of the lodestar equation --the hourly rate --we stated that the court should take into account all of the factors enumerated in the Florida Bar Code of Professional Responsibility "except the 'time and labor required,' the 'novelty and difficulty of the question involved,' the 'results obtained,' and '[w]hether the fee is fixed or contingent.'" [Id. at 1150-51.]

Accordingly, based on the foregoing guidance, the arbitrator will calculate a reasonable fee award. The motion requests a total award of attorney's fees in the amount of $71,400.00 and costs of $3,626.26. The fees request represents 340 hours of time. The motion reminds the arbitrator that the final hearing in this matter, despite continual remonstrations by the arbitrator for the parties to settle the case and despite referrals to mediation and informal settlement conferences, spanned a period in excess of 2 ½ full days of testimony. According to the

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1259 (Fla. 2nd DCA 1999).

motion for attorney's fees:

> Because the Respondent refused to concede any issue in this matter, Petitioners were required to prosecute this matter to conclusion. Even on issues that the Arbitrator initially determined in favor of the petitioners, respondent continued to deny that violations had occurred. Respondent chose to attack the petitioners' credibility at every instance rather than to address the substantive issues that were raised. As a result of Respondent's total intransigence, significant time was incurred which exceeds 340 hours when this matter is concluded. Respondent has likely expended even more attorney hours than Petitioners with it estimated that Respondent was filled in excess of $81,000 to date.

By the reference in their motion above to the association denying matters previously ruled upon, petitioners are referring to the entry of the arbitrator's 11 page partial summary final order that ruled on certain aspects of the petition, answer, and affirmative defenses. After entry of the partial summary final order, the association filed a motion for rehearing which had the effect of changing the association's answer and re-introducing a myriad of issues previously ruled upon, none of which the association ultimately prevailed upon after the conclusion of the nearly 3 day final hearing in this case. When the association sought rehearing of the partial summary final order, the arbitrator at that point abated the action and required the parties to attend mediation, noting as follows:

> The arbitrator takes this occasion to remind the parties that arbitration is supposed to represent an opportunity to resolve their differences without the expense and delay of court proceedings. If additional issues are raised in this proceeding, and if dormant issues lacking practical significance are resurrected,

> this proceeding will take on the appearance of a court proceeding. Costs and attorney's fees will continue to mount and may reach $5,000--$10,000 per side or more. The parties are reminded that the party who loses this proceeding will be required to pay his attorney as well as the opposing attorney. The parties are further reminded that if the parties are determined to bring these issues to court after the conclusion of the arbitration proceeding, an appeal is possible by which the entire dispute will be re-litigated and heard by a judge, which will more than double the costs and fees incurred in the arbitration proceeding. And again, the losing party will have the opportunity of now paying 4 sets of attorney's fees. Further appeals to the district courts are possible, although it take 4-6 years of litigation to complete the entire appeals process.

As suggested above, despite repeated warnings and admonitions, the case was not settled and an excessive amount of attorney's fees was expended by both sides.

Our first task is to determine a reasonable hourly attorney fee. Counsel for the petitioners claims an hourly rate of $210. According to the petitioners, the standard hourly rate for services provided in the community in which the condominium is located is between $190 and $225 per hour. Actually, the arbitrator finds that the typical hourly rate for such services ranges between $150

to $175 per hour. Counsel for the petitioners has been admitted to the Florida Bar since 1976 and has practiced or concentrated in the area of association practice since 1984. Petitioners have not paid their attorney any attorney's fees as counsel had agreed to take the case on a contingency fee basis.

Based on these factors, the arbitrator finds that the hourly fee of $195.00 is the figure that best reflects a reasonable attorney's fee, given the experience of counsel, the location of the condominium and the rates charged in the community for attorney's with similar experience offering services in similar proceedings brought pursuant to s. 718.1255, F.S.

Our next task is to examine the tasks performed and to determine whether petitioners are requesting a reasonable recovery. The association has challenged nearly each of the entries appearing on the 15 pages of billing statements submitted by counsel for the petitioners. First, the arbitrator finds that the petitioners prevailed on all significant issues in the case. The counts that early on were dismissed for lack of subject matter jurisdiction generated very little work and no discount for the dismissed counts is warranted. As petitioners prevailed on all substantial issues in the case, the arbitrator will not apportion fees and thereby award only the percentage of fees on issues that the petitioners prevailed on.

The association asserts that many of the entries on the billing statement are vague and incomplete. The arbitrator finds that except as otherwise noted herein, the entries describing the activities undertaken on behalf of the petitioners

are sufficiently descriptive to permit the arbitrator to evaluate the specific nature of the activities undertaken, and to determine whether a reasonable amount of time was expended for the particular task. Therefore, these general objectives are overruled. Similarly, the arbitrator cannot rule that spending 133 hours on client contact was excessive given the nature of the case, the contested manner of representation, the volume of pleadings and activities that occurred in the case, and given the heightened level of activity that was created. Given these factors, the arbitrator finds that recovery for 133 hours of client contact was necessary and reasonable.

The association argues that 5.9 hours shown on the billing statement represents activities undertaken in connection with a companion circuit court action. In their rebuttal, petitioners did not deny that this is the case, and upon examination it appears likely that 5.9 hours should be deducted for this purpose.

Similarly, throughout the billing statement there are numerous references to letters from the Bureau that the arbitrator believes refer to the conduct of a manger's investigation conducted by the Bureau of Condominiums. Petitioners are licensed CAM's. The investigation had no proper relationship to the arbitration proceeding and hence in the timesheets shown prior to the final hearings conducted in this case, the arbitrator will deduct these hours shown.15

15 Having said that the administrative complaint was irrelevant, however, does not compel the conclusion that all sums so expended were unnecessary. After the final order was issued, the association filed its notice of new information, claiming that the petitioners had misrepresented facts on their CAM application. Sums spent by petitioners in responding to

For June 24, 2000, .40 hour is deducted. For July 3, 2000, the arbitrator will deduct 1.0 hour from the 4.0 hour shown. The entries for July 24 through July 28 are disallowed (1.1 hours). The activities shown for August 18, double entries totaling .60 hour, will be disallowed. The entry for October 3, 2000, (.30 hour) is likewise not recoverable. For the same reasons, the November 14, 2000 activities (1.7 hours) are not compensated. The entry shown for December 1, 2000, in the amount of .30 hour is denied. The total deduction for these activities amounts to 5.4 hours. The entries shown for August 23, 2000 and for September 9, 2000, totaling .40 hour, are also disallowed.

Some of the entries claimed require an adjustment based on what a reasonable fee is. The sum of 5.0 hours is claimed for the preparation of the motion for fees and supporting documents; the arbitrator finds that 2.5 hours is a reasonable recovery for this service.

With the exceptions noted above, the hours spent and activities undertaken by counsel for the petitioners are found to be necessary and reasonable. The remainder of the association's objections are overruled. Petitioners' request that they be excused from their pro-rata portion of the assessments levied by the association to pay for association's counsel is denied. The provision which petitioners seek to take advantage of, located in s. 718.303, F.S., that permits an award of fees that would take this sum into account, is only applicable to an action at law and not to an arbitration proceeding.

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the notice of new information filed in the arbitration proceeding are deemed necessary and

In sum, the petitioners are awarded for 340 hours of attorney time less the sum of 14.2 hours, or 325.80 hours, multiplied by $195 per hour, for a total attorney's fee award of $63,531.

Petitioners request an award of $3,838.95 in costs. The claim of $347.27 for office supplies appears to be in the nature of ordinary office expenses which are nonreimbursable; this charge is therefore not allowed. Petitioners paid the court reporter an appearance fee and a transcript fee. The appearance fee is allowed. According to the Statewide Uniform Guidelines for the Taxation of Costs in Civil Actions, the cost of a transcript is only recoverable to the extent the same was used for impeachment purposes. The arbitrator does not recall the use of a transcript for impeachment purposes. In addition, it would appear that the transcript served a limited useful purpose. Since appeal of an arbitration final order involves a de novo proceeding, the reviewing court would typically not review a transcript of the proceeding below in order to find reversible error, and it is not abundantly clear that the transcript would even be admissible in the de novo proceeding. The transcript was not filed with the arbitrator in order to facilitate entry of the arbitration final order. The transcript costs are therefore not awarded; this amounts to $1,551.62. The remainder of the requested costs are awarded, totaling $1,940.06.

Wherefore the petitioners are hereby awarded the sum of $63,531 in attorney's fees and the sum of $1,940.06 in costs. The association shall pay the

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reasonable.

total sum of $65,471.06 to the petitioners within 20 days of the entry of this final order.

DONE AND ORDERED this 20th day of February, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 20th day of February, 2002 to the following persons:

John A. Leklem, Esquire
5151 Adanson Street, Ste. 98
Orlando, Florida 32804

Joyce C. Fuller, Esquire
1900 Summit Tower Blvd., Ste. 820
Orlando, Florida 32810-5920

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this order. This order does not constitute final agency action and is not appealable to

the district courts of appeal.

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

IN RE: PETITION FOR ARBITRATION

Bay Harbor Condominium Association, Inc.,

Petitioner,

v. **Fee Case No. 01-3830**
Rel. Case No. 01-2899

Vincent Innocenti,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association, respondent below, filed its motion for costs and attorney's fees in this matter on October 12, 2001, seeking an award for 6.55 hours of attorney time billed at $150 per hour plus $50 in costs (filing fee). The total recovery sought is $982.50 in attorney's fees and $50 in costs.

According to s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to have the other party pay its reasonable costs and attorney's fees. The unit owner, petitioner below, disputes that the association was the prevailing party in the underlying proceeding.

Petitioner below filed his petition seeking to challenge certain actions of the association including removal of certain existing landscaping and the installation

of a new drainage system, alleged to have been undertaken without any authorizing unit owner votes and without a supporting vote for the ensuing special assessment. The association filed its answer denying that a vote of the membership was required. The parties were scheduled to attend a mediation session which never occurred. Pursuant to a status report, the association advised the arbitrator that the petitioner owner would not be pursuing the petition. Pursuant to order, petitioner did not indicate an intent to pursue arbitration, and the arbitrator thus dismissed the action.

A party is considered to have prevailed if it succeeds on a significant issue in the proceeding and achieves some of the benefit sought in bringing the action. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla. 1992). Prevailing party status is also found to exist where the legal action filed was the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law. 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 363 (Fla. 2nd DCA 1984). A party may be a prevailing party even if the action is not resolved on the merits, as where a case become moot through voluntary corrective action. Suncrest Townhouse Condominium, Inc. v. Bottorff, Arb. Case No. 92-0177, Final Order on Motion for Fees (March 25, 1993). In Fairway Park Condominium Association, Inc. v. Dilloff, Arb. Case No. 97-0267F, Final Order (August 6, 1987), the arbitrator dismissed a claim for attorney's fees where the petition was dismissed because the claim was pending before a fair housing authority, finding that there was no

prevailing party. In French Villas of Lighthouse Point Condominium Association, Inc., Arb. Case No. 99-1928, Final Order Denying Motions for Attorney's Fees and Costs (December 3, 1999), where the unit owners denied each material allegation in the complaint and asserted viable defenses, the arbitrator concluded that no basis existed to determine prevailing party status where the case was dismissed as moot when the owners moved from the unit for reasons unrelated to the arbitration proceeding. In Imperial Oaks Condominium Association, Inc. v. Burnside, Arb. Case No. 93-0322, Final Order of Dismissal (May 23, 1994), no fees were awarded to the association where the record did not demonstrate that the act of the tenants in moving from the unit was required by law, where the tenants had denied the acts of vandalism. In Kelly Greens Single Family Condominium III Association, Inc. v. Laudati, Arb. Case No. 94-0417F, Final Order (December 21, 1994), the arbitrator did not identify a prevailing party where due to health problems that developed after the filing of the petition, the unit owner acceded to the demands of the association. The relief obtained was not related to the filing of the petition or the merits of the dispute.

Here there has been no adjudication on the merits, no party has provided or obtained any relief from the other as a result of the action, and the record below does not contain enough information to permit a conclusion that the petitioner would or would not have prevailed on the merits. In addition, a determination on the merits of the dispute would have required the resolution of disputed issues of material fact concerning whether the projects undertaken

by the board constituted material alterations to the common elements or in the alternative constituted ordinary maintenance or repair. The arbitrator without these key facts is unable to make a determination on the merits. Given the state of the record, it is unknown why the petition was not pursued by the unit owner; quite possibly the decision was unrelated to the merits of the dispute. Given these considerations, the arbitrator concludes that the association was not the prevailing party, and the motion for costs and attorney's fees is denied.

DONE AND ORDERED this 12th day of December, 2001, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 12th day of December, 2000:

Christopher J. Shields, Esquire
P.O. Drawer 1507
Ft. Myers, Florida 33902-1507

Chris Davies, Esquire
12601 World Plaza Lane, Ste. 2
Ft. Myers, Florida 33907

_____

Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

IMPERIAL POINT GARDENS
CONDOMINIUM, INC.,

Petitioner,

v. Fee Case No. 01-3941
Rel. Case No. 01-3362

GARY BYRD,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On November 1, 2001, Imperial Point Gardens Condominium, Inc. (petitioner/association) moved for an award of $1,885 in attorney's fees and $70 in costs, totaling $1,955. The attorney's fee case stems from arbitration case number 01-3362. In the underlying case, the association alleged that the respondent installed a satellite dish on the roof of the condominium, in violation of the condominium documents. On October 3, 2001, a final order of dismissal was entered after the parties agreed that the respondent had removed the satellite dish from the roof.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Because the respondents were ordered to remove the satellite dish from the common elements, the petitioner achieved the benefit it sought when initiating this case. The petitioner is, therefore, the prevailing party and is

entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the petitioner. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

Kevin Markow, Esquire, charged the association $200.00 per hour. Counsel has been licensed to practice law in the State of Florida since 1995. The requested rate exceeds the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience. The association will be compensated at the rate of $175 per hour for counsel's legal services.

The petitioner seeks recovery for 10.70 hours for activities performed by counsel. The entries that predate June 20, 2001, the date on which counsel began drafting the petition for arbitration (totaling 2.9 hours) are denied, with the exception of 1 hour for provision of advance written notice of the dispute to the association as required by section 718.1255(4)(b), Florida Statutes. Recovery of attorney's fees pursuant to section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not

recoverable). The remaining entries on the billing statement, totaling 8.8 hours, reflect reasonable expenditures of time to litigate this case and are awarded. Thus, the unit owners are awarded $1,715 (9.8 hours at $175 per hour) in attorney's fees. All of the entries listed on counsel's billing statement reflect reasonable expenditures of time to successfully litigate this case and will be awarded. The petitioner is, accordingly, awarded $741 in attorney's fees.

The petitioner requests compensation for the $50 filing fee and $20 for service of process. These are recoverable costs. The petitioner is, therefore, awarded $70 in costs.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Gary Byrd (respondent) shall pay the sum of $1,785 to Imperial Point Gardens Condominium, Inc. (petitioner).

DONE AND ORDERED this 28th day of December 2001, at Tallahassee, Leon County, Florida.

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Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to: Kevin Markow, Esquire, Becker & Poliakoff, P.A., 3111 Stirling Road, Fort Lauderdale, FL 33312 and Gary Byrd, 5800 N.E. 22nd Way, Unit No. 524, Fort Lauderdale, FL 33308, this 28th day of December 2001.

_____

Cassandra Pasley, Arbitrator

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Ocean Club Townhomes at Juniper Condominium Association, Inc.,

Petitioner,

Arb.Case No. 02-4302

v.

Rel.Case No. 01-2593

Robert Spiegel,

Respondent.
_____/

FINAL ORDER ON MOTIONS FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and hereby enters this final order as follows:

Respondent initially filed a request for award of attorney's fees in this matter on January 11, 2002. Respondent was required to file an amended motion which was filed on January 29, 2002. In the meantime, the association had filed its own motion for award of attorney's fees on January 24, 2002. The motions relate to the underlying arbitration case, case no. 01-2593, in which a final order after hearing was entered on December 20, 2001. It is necessary to examine the particulars of the final order in determining prevailing party status for the purpose of an award of attorney's fees.

By its petition, the association sought removal of the respondent's dogs because they were said to be nuisances due to their barking and menacing demeanor, because they were permitted to roam on the common elements, and because they exceeded the 50 pound limit. The arbitrator determined that the animals were not a nuisance as no evidence was presented that they barked any more than any other dog or that their barking impaired the ability of the residents to use and enjoy the property. The final order also found that the dogs were currently being accompanied by their owner when present on the common elements and were not permitted to roam. The final order further found that the dogs exceeded the 50 pound limit and must be removed for this reason despite the assertion that the developer gave

permission to respondent to keep the dogs. The arbitrator determined that insufficient evidence was presented to conclude that such permission was given and that in any event, the developer lacked the authority to waive the pet restrictions. In its petition, the association had alleged that the respondent himself was a nuisance and should be enjoined from nuisance activities. The final order found that respondent was not currently a nuisance and that no substantial evidence had been presented that respondent had ever produced nuisance conditions in the past. The arbitrator did not award the association any relief on this count.

The association also alleged in its petition that respondent had installed certain unapproved features on the common elements including the railing on

his balcony, an exterior light, and a glass panel on the garage door. The arbitrator allowed the respondent to keep the railing, required the respondent to change the light fixture, and found that the corrective measures already undertaken by respondent with reference to the garage door were adequate.

Section 718.1255, F.S., requires an award of costs and attorney's fees to the prevailing party. The parties disagree on whether the association or the respondent is the prevailing party. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Here, it is concluded that the association prevailed on the dog weight issue, the light fixture issue, and the garage door issue16, and that the respondent prevailed on the dog nuisance issue, the railing issue, and the nuisance issue. The association gained the relief sought on three issues, and respondent succeeded in defending himself on the other three claims. The arbitrator further finds that it would be helpful to separate the issues into major and minor issues. The dog weight17 issue and the railing issue were obviously the two most important issues in the case, judging from the amount of evidence produced at the final hearing as to these issues relative to the other issues, and judging from the time spent addressing these issues at the final hearing. The light fixture issue, the

16 The association prevailed on this issue because at the time of the final hearing, respondent had already taken sufficient corrective action such that an award of additional remedial relief was not necessary.

17 The "weight" issue includes the estoppel and waiver claims made by respondent with

nuisance issue, the dog nuisance issue, and the garage issue were small issues requiring minimal preparation and requiring very little evidence or time at the final hearing.

Based on these conclusions, the arbitrator finds that each party prevailed on the same number of issues, and that each party prevailed on the same number of issues of like complexity and importance. Given this conclusion, an award of fees will be made to each party reduced by the amount awarded to the other party. The arbitrator adopts as a reasonable fee figure for each side, the fees charged by the association in the amount of $9,947.50 in lieu of the fees charged by respondent in the amount of $13,201. Having done so, the arbitrator finds that these fees offset each other and that no payment needs to made to or by either party. Respondent's request to be excused from his pro-rate portion of the assessment to pay the bill of the association attorney is denied; the relief contemplated by s. 718.303, F.S., is not available in arbitration proceedings.

DONE AND ORDERED this 14th day of March, 2002, at Tallahassee, Leon County, Florida.

_____

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

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regard to developer representations about keeping the dog.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing order has been sent by U.S. Mail to the following persons on this 14th day of March, 2002:

Steven M. Selz, Esquire
214 Brazilian Avenue, Ste. 210
Palm Beach, Florida 33480

V. Donald Hilley, Esquire
11382 Prosperity Farms Road, Ste. 124
Palm Beach Gardens, Florida 33410

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

FOREST HILL GARDENS EAST
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 02-4674
Rel. Case No. 01-3963

JIMMY GARCIA,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On March 22, 2002, Forest Hill Gardens East Condominium Association, Inc. (petitioner/association) moved for an award of $3,520 in attorney's fees and $85 in costs, totaling $3,605. On April 12, 2002, the respondent filed a response to the motion.

The fee request relates to arbitration case number 01-3963, the petition for which was filed on November 6, 2001. In the underlying case, the association alleged that the respondent violated the declaration of condominium by bringing two dogs onto the condominium property and keeping these two dogs in his unit. On February 14, 2002, a final order was entered requiring the respondent to permanently remove the dogs from the condominium property.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondent was ordered to permanently remove the dogs from the condominium property. Therefore, the association is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985),

the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

> The association seeks compensation for the legal services of Guy M. Shir, Esquire, at the rate of $200 per hour. Counsel has been licensed to practice law in the State of Florida since 1997 and has substantial experience in the area of condominium law. Nevertheless, the requested hourly rate exceeds the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience. See Ramblewood East Condominium Association, Inc. v. Patricia L. Bou, et al., Arb. Case No. 02-4401, Final Order on Motion for Attorneys' Fees and Costs (March 14, 2002) (The hourly rate of $200 has been awarded where the attorney has 20 plus years practice in the area of condominium law.). Accordingly, attorney's fees are awarded at the rate of $185 per hour.
> The association seeks recovery for 17.6 hours for activities performed by counsel. Recovery of attorney's fees pursuant to section 718.1255, Florida Statutes, is restricted to fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable). The entries that predate October 24, 2001, the date on which counsel began drafting the petition for arbitration (totaling 2.8 hours) are denied, with the exception of 1 hour for provision of advance written notice of the dispute to the unit owner as required by section 718.1255(4)(b), Florida Statutes. The remaining entries listed on counsel's billing statement reflect reasonable expenditures of time to successfully litigate this case. Therefore, the association is awarded recovery of attorney's fees for 15.8 hours at the rate of $185 per hour, which equals $2,923.
> The association requests compensation for the $50.00 filing fee and $30.00 for service of process. These costs are recoverable. The association is awarded $80.00 in costs.
> It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Jimmy Garcia (respondent) shall pay the sum of $3,003 to Forest Hill Gardens East Condominium Association, Inc. (petitioner).

DONE AND ORDERED this 30th day of April 2002, at Tallahassee, Leon County, Florida.

_____

Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Guy M. Shir, Esquire, Becker & Poliakoff, P.A., 500 Australian Ave. S, 9th Floor, West Palm Beach, FL 33401 and to Jimmy Garcia, 6120 Forest Hill Blvd., #204, West Palm Beach, FL 33415, this 30th day of April 2002.

_____

Cassandra Pasley, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE TOWERS OF QUAYSIDE NO. 4
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 01-2776
Rel. Case No. 00-1097

GEORGE GARAMI, and
ANNE GARAMI, unit owners, and
MARK MUTCHNIK, tenant,

Respondents.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

The petitioner filed a motion seeking recovery of attorney's fees and costs totaling $4087.50. The respondent did not reply to the motion.

This fees case arises from Arbitration Case Number 00-1097. That case was resolved by a summary final order issued by arbitrator Tyler Powell. The summary final order rejected the respondents' defenses and awarded the relief requested in the petition. Accordingly, the petitioner is the prevailing party and is entitled to an award of prevailing party attorney's fees and costs pursuant to rule 61B-45.08, Florida Administrative Code.

The petitioner seeks reimbursement for 25.85 hours of its counsel's time at the rates of $150 and $190 per hour for a total of $3987.50. The time expenditures are unusually large, but review of the file reflects that the respondents, particularly the tenant, vigorously defended against the petition and that much of the time expenditure can be traced to these defense efforts. The time records showing petitioner's activities accordingly reflect reasonable and necessary expenditures of time. With regard to the rates requested, petitioner was represented both by Helio De La Torre,

Esquire, who has practiced law in this state for more than 20 years and by Laura M. Manning, Esquire, who has practiced law in this state for less than five years. Both attorneys are knowledgeable in the field of condominium law. The rates requested are not excessive in light of counsel's experience and the nature of these proceedings, and are awarded.

The cost for which the association seeks reimbursement is the $50 filing fee, which is compensable.

ACCORDINGLY, IT IS ORDERED:

Within 30 days of the date of this order the respondents shall pay to the petitioner $4087.50 in reimbursement of its attorney's fees and costs.

DONE AND ORDERED this 27th day of July 2001, at Tallahassee, Leon County, Florida.

_____

Therese Pine, Arbitrator,
Dept. of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Helio De La Torre Esq and Laura Manning Esq at Siegfried Rivera Et Al, 201 Alhambra Cir Ste 1102, Coral Gables FL 33134, to Lewis S Kimler Esq., 600 N E Third Ave, Fort Lauderdale FL 33304 and to George and Anne Garami, 241 Atlantic Island, Miami Beach FL 32399-1029 on this the 27th day of July, 2001.

_____

Therese Pine, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

Twin Fountains Club Owners Ad-Hoc Committee, Josephine Beverly, Durwood R. Barber, Mary Beverly, Francis H. McTague, Alice Rose Rogers, and Paul Rogers,

Petitioners,

v. **Fees Case No. 02-4550**
Rel. Case No. 01-3329

Twin Fountains Club, Inc.,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Petitioners filed their motion for costs and attorney's fees on March 1, 2002, seeking an award of $12,499.00 in attorney's fees and $187.00 in costs. The association filed its response to the motion for fees on March 26, 2002. The request for fees seeks reimbursement for costs and attorney's fees incurred by petitioners in the underlying arbitration case. A final order was entered in that case on January 28, 2002. The order found that the association had willfully failed to permit access to the official records on two occasions and consequently awarded the petitioners the sum of $1000 in statutory damages. The association was ordered to open its books and records within 10 days of the final order.

The Petitioners are the prevailing party in the underlying case, and are entitled to an award of costs and attorney's fees. Section 718.1255(4)(k), Fla. Stat. (1992) provides that "...The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator." A party is a "prevailing party" if he succeeds on a significant issue in the arbitration and achieves some of the benefit he sought in the litigation. Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807 (Fla. 1992).

First, the arbitrator must find a reasonable hourly rate for attorney's fees. The firm employed by petitioners billed out at 3 different hourly rates ranging from $150 to $190 per hour. The arbitrator was unable to locate any explanation for the various rates charged. Only one attorney filed pleadings on behalf of the petitioners. The only affidavit accompanying the fees motion first says that $165 is a reasonable hour rate, then suggests that $185 is a reasonable rate. No qualifications of litigating counsel have been presented. Counsel for the association argues that counsel for the petitioners joined the Bar in 1998. Based on all these factors, and on those rates charged by attorneys with similar experience providing representation in arbitration proceedings conducted pursuant to s. 718.1255, F.S. in the community in which the condominium is located, the arbitrator concludes that the hourly rate of $165 should be awarded.

As an initial observation, the arbitrator agrees with the association that the amount spent on the case is disproportionate to the relief sought and ultimately obtained by the unit owners. However, in the main, the reason fees were so high,

exclusive of the deductions appearing below, is the manner in which the case was defended by the association and the refusal of the parties to enter into what should have been an easy settlement agreement. When the arbitrator abated the case below and required the parties to attempt to settle the case, the order abating action provided:

> ...The arbitrator takes this opportunity to encourage the parties to consider settlement of this case. If the parties do not settle the matter, it has been the experience of the arbitrator that final hearings involving the issue of access to the official records are very expensive and time consuming. If this matter proceeds to final hearing, attorney's fees may exceed $5000 per side, with the losing party paying both sets of attorney's fees; further appeals are possible under the statute. In lieu of the uncertainty of the outcome and the possibility of future litigation including appeals, and considering the relative ease with which this case may be settled, it is strongly recommended that the parties settle this case including the issue of attorney's fees.
>
> It is not subject to debate that the records of the association in essence belong to the owners. The association is in this respect the custodian of the records for the benefit of the owners who are guaranteed access to the official records....The arbitrator will not accept evidence concerning the motives of the ad hoc committee members; the board under the statute is not empowered to decide when the motives of the owner become capable of being classified as harassment in order to withdraw access. The portion of the rule that purports to authorize this procedure is inconsistent with the statutory right of access.
>
> For these reasons, the arbitrator hereby abates the case for 30 days to permit the parties to settle the case. Petitioners shall initiate the communication, and each party shall cooperate to the fullest extent possible.

Thus, the parties were on notice that fees would exceed the value of the claims in this case and were greatly encouraged to settle the case. Furthermore, as

suggested above, the association is responsible for much of the surplus of fees generated in this case and cannot at this point be heard to argue that fees were excessive. The association's motion to dismiss, motion for more definite statement, and initial answer in the case were insufficient and this created several waves of pleadings until the answer was finally supplemented by respondent. The association's failure to comply with the prehearing order of the arbitrator necessitated petitioners' emergency motion to strike. The nature of the association's answer and statement of affirmative defenses required that petitioners spend additional preparation time and trial time in order to anticipate these defenses and rebut them.

The foregoing having been said, there are certain deductions that are required in order to award a reasonable fee. First, the only fees recovered in these proceedings are fees incurred "in the arbitration proceeding." See, s. 718.1255(k), F.S. Fees generated in a companion circuit court suit, fees incurred in the course of an appeal, and fees incurred prior the commencement of the arbitration proceeding are not incurred *in the arbitration proceeding* and will not be awarded. See, Bayview Condominium Association, Inc. v. Helmstetter, Arb. Case No. 98-4354, Final Order (December 3, 1998) (fees incurred in prior circuit court action and on appeal were not incurred in the arbitration proceeding and are not recoverable in the arbitration proceeding); Aspenwood at Grenelefe Condominium Association, Inc. v. Schifano, Arb. Case No. 95-0119F, Final Order (June 1995) (arbitrator is without authority to award fees incurred in the course of a trial de novo unless specifically directed to do

so by the presiding judge); Big Pass Association, Inc. v. Aaron, Arb. Case No. 95-0305F, Final Order (October 31, 1995) (attorney's fees would not be awarded for time spent in circuit court proceeding predating the arbitration proceeding, or for time spent in matters relating to both the arbitration and the court proceeding).

Based on the foregoing, the first entry that demonstrates eligibility for an award of fees and costs corresponds to the drafting of the petition for arbitration on May 29, 2001. Activities undertaken prior to the drafting of the petition were not undertaken in this proceeding, and will not be awarded, except for 1.0 hour to fashion the demand letter required by s. 718.1255, F.S. Thus, from February 2 to May 24, of the 10.1 hours expended, only 1 hour will be reimbursed.

The next composite activity that requires adjustment is the time spent by counsel for the petitioners in preparing for the final hearing. The activity sheets show that counsel spent 24.5 hours preparing for the final hearing in this matter between November 19 and December 12. The final hearing lasted less than 5 hours. The association called 3 somewhat-major witnesses and approximately 3 very minor witnesses. The only issues ostensibly involved were two instances of denial of access to the official records. The arbitrator finds that a reasonable preparation time for the final hearing was 10 hours.

In addition to the above entry, counsel reports 8.0 hours spent traveling to Bartow, attending the final hearing, and returning to Bartow. Counsel for the association reports that travel time in total should not exceed 3-4 hours and suggests that counsel for petitioners by accident has combined travel time with hearing time,

as the entry immediately prior to the 8.0 hour claim is the claim for 5.0 hours for attendance at the final hearing. The arbitrator has already awarded 5.0 hours for attendance at the hearing, and would be inclined to award 3 hours for travel time, but for the fact that it appears that attorney travel time is not a recoverable cost absent a showing that competent attorneys are unavailable in Bartow, a leap the arbitrator is not willing to take in the absence of competent evidence on the subject. See, Gwen Fearing Real Estate, Inc. v. Wilson, 430 So. 2d 589 (Fla. 4th DCA 1983); Fence Wholesalers of America, Inc. v. Beneficial Commercial Corporation, 465 So. 2d 570 (Fla. 4th DCA 1985). Hence, the arbitrator is constrained to disallow the 8 hour entry in its entirety.

Several more entries require some adjustment in order to award a reasonable fee. The entry corresponding to February 4 for a projected 2 hours for attending a hearing on attorney's fees were not actually incurred and are not awarded. The entry corresponding to February 7 regarding enforcement of the final order (.50 hour) does not show activities undertaken in this proceeding and is disallowed.

With these noted exceptions, the arbitrator finds that the remainder of the entries represent work reasonably undertaken in this proceeding, and that a reasonable time was spent on each activity. Counsel reports a total of 76.70 hours of attorney time expended. From this total the arbitrator has deducted 34.1 hours, leaving 42.6 hours awarded at $165 per hour, plus costs of $187, for a total award of $7216. The association shall pay this sum to the petitioners within 30 days of the entry of this final order.

DONE AND ORDERED this 8th day of May, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 8th day of May 2002:

Marlene Kirtland, Esquire
Becker & Poliakoff, P.A.
500 Winderly Place, Ste. 104
Maitland, Florida 32751

Jonathan James Damonte, Esquire
12110 Seminole Boulevard
Largo, Florida 33778

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

CIRCLE WOODS OWNERS
ASSOCIATION, INC. OF VENICE,

Petitioner,

v.

Fee Case No. 02-4841
Rel. Case No. 01-4070

NANCY BALAZAS and
RUSSELL BALAZAS,

Respondents.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 1st, 2002, Circle Woods Owners Association, Inc. of Venice (petitioner/association) moved for an award of $4,410.00 in attorney's fees and $137.71 in costs, totaling $4547.71. The fee request relates to arbitration case number 01-4070, the petition for which was filed on November 26th, 2001. In the underlying case, the association alleged that the Respondents had interfered with the right of other owners to peaceful and quiet occupancy of their property by the playing of loud music, reckless driving and abusive behavior in violation of the rules of the association. On March 18th, 2002, a final order after default was entered requiring the respondents to refrain from playing loud music, reckless driving and abusive behavior.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondents were ordered to refrain from playing of loud music, reckless driving and abusive behavior. Therefore, the association is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The association seeks compensation for the legal services of Scott D. McKay and Telese B. McKay at the rate of $175.00 per hour. Both counsels have

experience in the area of condominium law. The requested hourly rates do not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, fees are awarded at the requested rates.

The association seeks recovery for 18.5 hours for activities performed by Mr. McKay and 3.8 hours by Ms. Mckay. Additionally, the association seeks recovery for the services of paralegals Gretchen Heidenberg and Ladelle Hammond at the rate of $85 per hour for 13.8 hours combined. Those rates do not exceed the amount awarded for the services of paralegals in similar cases; therefore, fees are awarded at the requested rates.

The time sheets presented to the Arbitrator show that 6.4 hours of attorney time and 8.9 hours of paralegal time were expended in the drafting of the petition in this case, for a total of 15.3 hours. In a similar case, a claim of 8.2 hours for "the preparation and filing of an adequate petition" was held to be excessive and the amount granted for that effort was reduced to 4 hours. See, Bent Tree Villas East Condominium Association, Inc. v. Maria Dolan, Arb. Case No. 00-1086, Final Order (September 16, 2000). Upon review of the complexity of the petition the Arbitrator finds that an award of 5 hours of attorney time would be appropriate.

Additionally, Petitioner seeks recovery for 1.7 hours of attorney time for activities preceding the drafting and filing of the petition. This time is not recoverable as it occurred prior to the arbitration proceeding. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to

fees incurred in the arbitration proceeding. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993) (fees incurred prior to the drafting and filing of the petition for arbitration are not recoverable). However, as that section imposes certain requirements on a petitioner preceding the filing of the petition, one hour of attorney time, to fulfil the notice requirement of the Statute, is routinely deemed recoverable and is hereby awarded.

The Petitioner seeks to recover $556. 50 for "work in progress fees." This is insufficiently documented to be awarded and would appear to be a post arbitration expense. The association also requests compensation for $137.71 in costs. These costs are identified in the documentation submitted as, the cost of postage ($115.75), copies ($10.91), a phone call ($.25) and "work in progress costs" ($5.94). Those costs are office expenses and are not recoverable. See, Statewide Uniform Guidelines for the taxation of Costs in Civil Actions. However, as there is no separate listing for the $50 filing fee required to initiate the underlying case and the initial postage expense is too high unless the filing fee were subsumed within that bookkeeping category, the Arbitrator concludes that the filing fee – which is recoverable - was part of the cost of this action. Therefore, the Petitioner is awarded the $50 filing fee.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part and DENIED in part.

2. Within 30 days of the date of this order, Nancy Balazas and Russell Balazas (respondents) shall pay the sum of $2657.00 to Circle Woods Owners Association (petitioner). Liability for this sum among the respondents is joint and several.

DONE AND ORDERED this 4th day of June 2002, at Tallahassee, Leon County, Florida.

_____

Peter Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Scott McKay, Levin, Tannenbaum, Wolff, Band, Gates & Pugh, PA, 1680 Fruitville Road, Suite 102, Sarasota, FL 34236 and Nancy M. Balazs and Russell Balazs 459 Circlewood Drive, Venice, Florida 34293, this 4th day of June 2002.

_____

Peter Gioia, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

WINDRUSH BAY CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

FEE CASE NO.: 02-5105
REL. CASE NO.: 00-2092

v.

ROBERT LUCAS,

Respondent.

_____/

FINAL ORDER DENYING MOTION TO TAX ATTORNEY'S FEES

On June 17th, 2002 a motion for attorney's fees in the above entitled case was received by this Department seeking $3,610 in fees and costs. The final order in the underlying case was issued on April 24th, 2002. The above referenced motion for attorney's fees was thus filed with the Department 57 days after the issuance of the final order. The certificate of service suggests that it had been mailed on the 44th day after the issuance of the final order, and a dated postmark is absent from the envelope containing the motion. Pursuant to rule 61B-45.048, F.A.C., a motion for cost and fees must be filed within 45 days of the date of the entry of the final order. Under rule 61-B45.048, F.A.C."The motion is considered filed when it is received by the Division." See, Kelly Greens III Single Family Condominium Association, Inc. v. Stillings, Arb. Case No. 95-0172F, Final Order on Motion for Attorney's

Fees (May 18, 1995)(motion for fees dismissed where it was filed outside the 45-day period required by Rule 61B-45.048, F.A.C.).

On June 20th, 2002, an order to show cause why the motion for attorney's fees and cost should not be dismissed as untimely was issued stating that, absent a showing to the contrary, an order dismissing the motion for attorney's fees would be issued. The Petitioner was given ten days to file a response to that order. Twenty days have now passed since the issuance of that order and there has been no response.

Based on the foregoing, it is ORDERED:

That the motion for attorney's fees in the above case is hereby denied as the motion was untimely filed.

DONE AND ORDERED this 9th day of July 2002, at Tallahassee, Leon County, Florida.

_____
Peter Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL

AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Steven H. Mezer, Bush Ross, Gardner, Warren & Rudy, P.A., P.O. Box 3913, Tampa, FL 33602 and Robert Lucas, 427 Windrush Bay Dr., Tarpon Springs, FL 34689, this 9th day of July 2002.

_____
Peter Gioia, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

BORDEAUX VILLAGE CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v.

Fee Case No. 02-5104
Rel.Case No. 02-4622

GRANT TOLBERT and CALLISTA TOLBERT,

Respondents.
_____/

FINAL ORDER DENYING MOTION TO TAX ATTORNEY'S FEES

On June 17th, 2002 a motion for attorney's fees in the above entitled case was received by this Department, seeking $3,610 in fees and costs. The final order in the underlying case was issued on April 24th, 2002. The above referenced motion for attorney's fees was thus filed with the Department 52 days after the issuance of the final order. The certificate of service suggests that it had been mailed on the 44th day after the issuance of the final order, and a dated postmark is absent from the envelope containing the motion. Pursuant to rule 61B-45.048, F.A.C., a motion for costs and fees must be filed within 45 days of the date of the entry of the final order. Under rule 61-B45.048, F.A.C."The motion is considered filed when it is received by the Division." See, Kelly Greens III Single Family Condominium Association, Inc. v. Stillings, Arb. Case No. 95-0172F, Final Order on

Motion for Attorney's Fees (May 18, 1995)(motion for fees dismissed where it was filed outside the 45-day period required by Rule 61B-45.048, F.A.C.).

On July 3rd, 2002, an amended order to show cause why the motion for attorney's fees and costs should not be dismissed as untimely was issued stating that, absent a showing to the contrary, an order dismissing the motion for attorney's fees would be issued. The Petitioner was given ten days to file a response to that order. Fourteen days have now passed since the issuance of that order and there has been no response.

Based on the foregoing, it is ORDERED:

That the motion for attorney's fees in the above case is hereby denied as the motion was untimely filed.

DONE AND ORDERED this 17th day of July 2002, at Tallahassee, Leon County, Florida.

_____

Peter Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS

FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Steven H. Mezer, Bush Ross, Gardner, Warren & Rudy, P.A., P.O. Box 3913, Tampa, FL 33602, Kirstin Tolbert, 12701 North 50th Street, #F11, Tampa, FL 33617 and Grant and Callista Tolbert, 11291 Long Hill Court, Spring Hill, FL 34601, this 17th day of July 2002.

_____
Peter Gioia, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

RORY O'NEIL,

Petitioner,

ARB.CASE NO.02-4878
v. REL.CASE NO. 01-4073

TAREYTON, INC.,

Respondent
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 10th, 2002, Rory O'Neil (petitioner/unit owner) moved for an award of $1,330.00 in attorney's fees and $50.00 in costs, totaling $1380.00. The fee request relates to arbitration case number 01-4073, the petition for which was filed on November 26th, 2001. In the underlying case the Petitioner alleged that Tareyton, Inc. (Respondent/association) had failed to provide the Petitioner access to records of the association. Under Section 718.111(12)(b), Florida Statutes, the official records of the association are to be made available to a unit owner within 5 working days after receipt of a written request to the board or its designee. An amended final order, directing the Respondent to provide the required access to the documents, was issued May 7th, 2002.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the

arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondent was ordered to provide the required access to requested documents. Therefore, the Petitioner is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The Petitioner seeks compensation for the legal services of Mr. F. Blane Carneal at the rate of $200.00 per hour. Respondent, in its response

to Petitioner's motion for attorney's fees (received June 3rd, 2002), contests this rate. Respondent states that a "reasonable hourly rate would be $175/hour." Petitioner's counsel has extensive experience in the area of condominium law and was previously compensated at the requested rate in a previous case dealing with inspection of records[1]. The requested hourly rate dose not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the hourly fee is awarded at the requested rates.

The association seeks recovery for 6.65 hours for activities performed by Mr. Carneal. The time sheets presented show 2.5 hours of attorney time for activities preceding the drafting and filing of the petition. Respondent requests that two hours of the time be disallowed. This time is not fully recoverable as it occurred prior to the arbitration proceeding. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred *in the arbitration proceeding*. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993). However, as that section imposes certain requirements on a petitioner preceding the filing of the petition, including pre-arbitration notice,

[1] As stated in Viviene Brown-Myrtil, V.Oakland Forest Club Condominium Association, Inc., Fees Case No. 00-1834 Rel. Case No. 00-1039(November 30th, 2000).(citation omitted), "petitioner's counsel, F. Blane Carneal, Esquire, charged $200 per hour for his legal services. Counsel has been licensed to practice law in the State of Florida since December 1978 and has experience in the area of condominium law. The rate of $200 per hour does not exceed the rate customarily charged in similar cases for attorneys with similar experience. … Therefore, the petitioner will be compensated at the requested rate for counsel's legal services."

one hour of attorney time is routinely deemed recoverable and is hereby awarded.

The Petitioner requests compensation for $50.00 in costs. That cost represents the required filing fee. As, the filing fee is recoverable as part of the cost of this action, the Petitioner is awarded that $50 filing fee.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Tareyton, Inc. (respondent) shall pay the sum of $1080.00 to Rory O'Neil (petitioner).

DONE AND ORDERED this 7th day of June 2002, at Tallahassee, Leon County, Florida.

_____

Peter Grant Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Fax#: (850) 487-0870

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL

AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to F. Blane Carneal, P.A., P.O. Box 030129, Fort Lauderdale, FL 33303 and Charles F. Otto, 3990 Sheridan Street, Suite 109, Hollywood, FL 33020, this the 7th day of May 2002.

_____
Peter Grant Gioia, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

ASHLEY OAKS CONDOMINIUM ASSOCIATION, INC.,

Petitioner, **CASE NO.: 02-4894**
v. **REL. CASE NO. 01-2598**

DANNY J. PHILLIPS, DIANNE PHILLIPS, and STEPHEN PHILLIPS, unit owners, and SUZANNE BLOUNT and MATTHEW BLOUNT, tenants,

Respondents.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 14th, 2002, Ashley Oaks Condominium Association, Inc. (petitioner/association) moved for an award of $4,165.00 in attorney's fees and $90.00 in costs, totaling $ 4,255.00. The fee request relates to arbitration case number 01-2598, the petition for which was filed on March 7th, 2001. In the underlying case the association alleged that the Respondents had violated the Rules and Regulations of the Ashley Oaks Condominium Association, specifically, Article XVII Sections (A) 5, 7 and 8 of the Association's declaration, by parking in the cul-de-sac and allowing guests to do the same and violating the Association's speed limits. Also, Respondents were alleged to have a dog on the property or otherwise under their control that disrupted the other residents' right to quiet enjoyment of their property.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondents were ordered to: 1) obey the Rules and Regulations of the Ashley Oaks Condominium Association, specifically, Article XVII Sections (A) 5, 7 and 8 of the Association's declaration, and not park in the cul-de-sac and direct any guests to park in the appropriate parking area and observe the Association's speed limits, and 2) to keep any dogs staying on their property or otherwise under their control from disrupting the other resident's right to quiet enjoyment of their property. Therefore, the association is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha

One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The association seeks compensation for the legal services of Ricky L. Thacker at the rate of $175.00 per hour. Counsel has been a member of the Florida Bar for over 10 years and has experience in the area of condominium law. The requested hourly rate dose not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the hourly fee is awarded at the requested rates.

The association seeks recovery for 23.8 hours for activities performed by Mr. Thacker. A memorandum filed by Respondent - Danny Phillips, contests some of the hours claimed by the petitioner. Mr. Phillips states that he has consulted with another member of the Florida Bar and was advised that the hours requested were excessive. However, no documentation was provided in support of this contention. A review of the timesheets presented in support of the motion reveals no time entries that could be considered excessive. In that this case lasted over a year, generated a number of motions and ended in a full hearing, the hours requested are found to have been necessary for the successful litigation of this action.

The association requests compensation for $90 in costs. Those costs include the filing fee ($50.00) and the cost of service of process ($40.00) Those costs are

recoverable as part of the cost of this action. Therefore, the Petitioner is awarded $90.00 in costs.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED.

2. Within 30 days of the date of this order, Danny J. Phillips, Dianne Phillips, and Stephen Phillips, unit owners, and Suzanne Blount and Matthew Blount, tenants (respondents) shall pay the sum of $4,255.00 to Ashley Oaks Condominium Association, Inc (petitioner). Liability for this sum among the respondents is joint and several.

DONE AND ORDERED this 11th day of June 2002, at Tallahassee, Leon County, Florida.

_____

Peter Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL DE NOVO IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Ricky L. Thacker, Michael J. McDermott, P.A., 791 West Lumsden Road, Brandon, FL 33511, Danny J. Phillips and Dianne Phillips, 821 Greenbelt Circle, Brandon, FL, 33510, and Stephen Phillips, 11414 Buchannan Lane, Sneffner, FL 33584, Suzanne Blount and Matthew Blount, 4502 Carolyn Court, Tampa, FL, 33610, this 11th day of June 2002.

_____

Peter Gioia, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

THE IMPERIAL AT BRICKELL
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 02-4984
Rel. Case No. 02-4565

SIMON GLOTTMAN and EVA GLOTTMAN,

Respondents.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 24, 2002, Imperial at Brickell Condominium Association, Inc. (petitioner/association) moved for an award of $765.00 in attorney's fees and $72.00 in costs, totaling $837.00. An order permitting response to the motion was issued on May 24, 2002. To date, the respondents have not filed a response to the motion.

The fee request relates to arbitration case number 02-4565, the petition for which was filed on March 4, 2002. In the underlying case, the petition alleged that the respondents were keeping a large dog in their unit, that on one or more occasions the dog had attacked another dog on the condominium property and that the dog had growled at and shown signs of aggression towards one the employees of the association. On April 16, 2002, a summary final order was entered requiring

the respondents to remove the dog from the condominium property, if they had not already done so.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondents were ordered to remove the dog. Therefore, the association is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The association seeks compensation for the legal services of David H. Rogel, Esquire, at the hourly rate of $225. Counsel has been practicing law for 20 years and has extensive experience in the area of condominium law. The requested hourly rate does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience. Therefore, attorney's fees are awarded at the requested hourly rate.

The association seeks recovery for 3.4 hours for activities performed by counsel. The entries listed on counsel's billing statement reflect reasonable expenditures of time to successfully litigate this case and are awarded.

The association requests compensation for the $50.00 filing fee and $22 for the cost of a title search. These costs are recoverable. Therefore, the petitioner is awarded $72.00 in costs.

Therefore, it is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Simon Glottman and Eva Glottman (respondents), jointly and severally, shall pay the sum of $837.00 (3.4 hours at $225 per hour, totaling $765.00 in attorney's fees, plus $72.00 in costs) to Imperial at Brickell Condominium Association, Inc. (petitioner).

DONE AND ORDERED this 24th day of June 2002, at Tallahassee, Leon County, Florida.

_____
Cassandra Pasley, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to David H. Rogel, Esquire, Becker & Poliakoff, P.A., 5201 Blue Lagoon Drive, Suite 100, Miami, FL 33126 and Simon Glottman and Eva Glottman, 1627 Brickell Avenue, Unit 2803, Miami, FL 33129, this 24th day of June 2002.

_____
Cassandra Pasley, Arbitrator

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Chateaux du Lac Condominium Association, Inc.,

Petitioner,

v. **Fees Case No. 02-5076**
Related Case 01-3451

Heather Yarbrough and D.B. Yarbrough,

Respondents.
_____/

FINAL ORDER ON REQUEST FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and issues this final order as follows:

The arbitrator issued a final order on the merits of the underlying dispute on June 6, 2002. The association filed its motion for attorney's fees on June 13, 2002; respondents filed their request for attorney's fees on June 14, 2002. The association had initiated the underlying case seeking entry of a final order requiring respondents to remove a washer and dryer installed in their unit. The final order contained the following findings:

> The respondents had not indicated prior to the time of the filing of the petition that Ms. Heather Yarbrough was suffering from multiple sclerosis and have not made prior demand upon the association in this regard. In fact she is suffering from MS and her doctors do not recommend that she be required to carry laundry from the common element washing facilities to her unit. She claims, therefore, that she is entitled as a reasonable accommodation that she be permitted to keep her washer and dryer in her unit. .
>
> The association since it first learned of Ms. Yarbrough's disability has been willing as a reasonable accomodation to permit Ms. Yarbrough to keep the washer and dryer in her unit. However, the association does not

want any tenants or other persons residing in the unit other than Ms. Yarbrough to be able to use the laundry facility. Ms. Yarbrough has not lived in the condominium for some time and is uncertain of her plans to reside in the condominium in the immediate future. Ms. Yarbrough does not want to remove the washer and dryer every time she stops living in the condominium for a period of time but wants to leave the machines installed in her unit ready for her use when she returns. The association does not wish to patrol the use of the washer and dryer and does not want to monitor Ms. Yarbrough's presence or absence at the condominium.

It is not contested but that multiple sclerosis constitutes a physical impairment that substantially limits a major life activity. Ms. Yarbrough is entitled to protection under the fair housing laws because she is a handicapped person. Compare, Leisure Living Estates Condominium Association, Inc. v. Sippell, Arb. Case No. 92-0295, Final Order (September 23, 1993). As such, the association is required to provide a reasonable accommodation, which it has offered to do by allowing Ms. Yarbrough the use of the washer and dryer in her unit for so long as she is occupying the unit. The arbitrator finds that this constitutes a reasonable accommodation. This accommodation is necessary in order to allow Ms. Yarbrough full use of her unit and the condominium property.

Therefore, it is ordered that Ms. Yarbrough is hereinafter permitted to use the washer and dryer contained in her unit during those times during which she actually resides in her unit. The washer and dryer shall remain installed in the unit whether she actually lives there or not and shall be available to her during periods of her residence. The accommodation is personal to Ms. Yarbrough and when she is not in residence, no one including Mr. Yarbrough or another family member, tenant or occupant is permitted to operate the laundry machines. If and when the unit is sold or title to the unit is otherwise transferred, the washer and dryer shall be removed and the association shall be permitted to inspect the unit in order to ensure compliance with this requirement.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and

reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). A party may also be a prevailing party even if the action is not resolved on the merits. Hall v. Dept. of Health & Rehabilitative Services, 409 So. 2d 193 (Fla. 3rd DCA 1982). This applies when a case becomes moot because the opposing party voluntarily provided the relief sought in the action. Prevailing party status may thus be found if the filing of the petition for arbitration was the catalyst motivating the opposing party to provide the relief sought, so long as the opposing party's actions were required by law. 51 Island Way Condominium Association, Inc. v. Williams, 458 So. 2d 364 (Fla. 2nd DCA 1984); Hoffmeister v. Coler, 544 So. 2d 1067 (Fla. 4th DCA 1989).

In the instant case, on its face it appears that the respondents were the prevailing party since they forced the petitioner association to grant Ms. Yarbrough a reasonable accommodation and were adjudged entitled to keep the washer and dryer in the unit. In the ordinary case, this result would probably obtain since the association would have not obtained the relief it requested in its petition. However, as determined in the final order, Ms. Yarbrough had not, prior to the filing of the petition[1], advised the association of her disabled status. Once her status was communicated after commencement of the proceeding, the association immediately

[1] There is no requirement in the statute, unfortunately, that prior to the initiation of an arbitration proceeding, a potential respondent advise the petitioner of all its affirmative defenses. Compare, s. 718.1255(4)(b), F.S., requiring that prior to the filing of a petition, the petitioner notify the respondent of the nature of the dispute, demand the relief requested, and give the respondent an opportunity to provide the relief requested.

took steps to provide a reasonable accommodation, and the case became moot. While the association provided the accommodation as required by law, and while the association ultimately received a less tangible result than it contemplated when it entered litigation, neither party received anything more or anything less than what the law required. The Yarbroughs received the right to a reasonable accommodation, and the association received the right to ensure that only Ms. Yarbrough utilized the laundry facilities, which are to be removed upon disposition of the unit. Had the Yarbroughs ever timely asserted their right to an accommodation prior to the institution of litigation, in all likelihood the petition would never have been filed. Under these circumstances, it cannot be said that any one party prevailed over the other, and each motion for award of costs and attorney's fees is denied. Each side shall bear its own costs and attorney's fees.

DONE AND ORDERED this 1st day of July, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 1st day of July, 2002:

James E. Olsen, Esquire
Wean & Malchow, P.A.
1305 E. Robinson Street
Orlando, Florida 32801

Chris A. Draper, Esquire
Becker & Poliakoff, P.A.
2500 Maitland Center Pkwy.
Suite 209
Maitland, Florida 32751

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

CYPRESS WOODS, INC.,

Petitioner,

v.

Fee Case No. 02-4886
Rel. Case No. 02-4593

HARRIS ROSEN,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 8th, 2002, Harold Rosen (Respondent/unit owner) moved for an award of $2,268.75 in attorney's fees. The fee request relates to arbitration case number 02-4593, the petition for which was filed on March 11th, 2002. In the underlying case the association, Respondent's tenants were alleged to have a dog on the property in violation of association rules. because, However, while the tenants were not listed, it was their dog that was the subject of the petition and therefore notice to them was required. A request was made to Attorney for the Petitioner for a copy of whatever notice had been sent to the tenants, the Waczewskis. The Petitioner informed the Arbitrator, in a letter dated March 18th, 2002, that the demand letters required by statute were sent to the properly manager and not the Waczewskis. This resulted in the dismissal of the petition on April, 17th, 2002

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association failed to achieve the benefit it sought when initiating this case due to the dismissal. Therefore, the Respondent is the prevailing party and is entitled to an award of attorney's fees.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The Respondent seeks compensation for the legal services of James P. Waczewski, Esquire, at the rate of $165.00 per hour. Counsel has been a member of the Florida Bar for 4 years and has little experience in the area of condominium law. The requested hourly rate does exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the hourly fee is reduced to $150.

The Respondent seeks recovery for 13.35 hours for work performed by Mr. Waczewski. A review of the timesheets presented in support of the motion finds some time entries that are considered excessive. Mr.Waczewski records 5 hours for the researching and drafting of the motion for motion for attorney's fees. It is customary to award 1 hour for that function. The remaining hours requested are found to have been necessary for the successful litigation of this action.

Based on the forgoing, it is ORDERED:

1. The motion for attorney’s fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Cypress Wood Condominium Association, Inc (petitioner) shall pay Mr. Harris Rosen (Respondent) $1168,75 in attorney's fees.

DONE AND ORDERED this 7th day of June 2002, at Tallahassee, Leon County, Florida.

_____

Peter Gioia, Arbitrator

Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee,Florida32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Frank Ruggieri, Larsen & Associates, P.A., 34 East Pine Street, Orlando, FL, 32801 and James P. Waczewski, 3618 Cagney Drive, Tallahassee, FL, 32309, and Harris Rosen, 7600 International Drive, Orlando, FL, 32819 this 7th day of June 2002.

_____
Peter Gioia, Arbitrator

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Parkside Condominium Association, Inc.,

Petitioner,

v. **Fees Case No. 02-5211**
Rel. Case No. 01-3937

Carlos Valdez,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Respondent filed his motion for recovery of costs and attorney's fees on July 9, 2002, seeking reimbursement for those costs and fees incurred in the lower arbitration proceeding, case no. 01-3937. A final order was entered in the underlying arbitration case on June 5, 2002 addressing the violations alleged to exist in the petition. The arbitrator found that the respondent's alarm system was not a nuisance, and did not order it removed or disconnected. With reference to the allegation that the respondent had changed the common elements by installing a satellite dish and cable, the arbitrator dismissed the count upon finding that the association had never informed the respondent where the dish cables needed to be run prior to the commencement of the action.

Pursuant to s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to have the other party pay its reasonable costs and attorney's fees.

Plainly the respondent prevailed in the proceeding and in fact respondent prevailed on each count contained in the petition; respondent was ordered to do nothing requested in the petition as relief. Therefore, the respondent is the prevailing party and is entitled to an award of reasonable fees and costs.

The arbitrator has examined both the hourly fee charged by counsel for the respondent as well as the specific activities undertaken by counsel in connection with the case. Counsel has been admitted to the Florida Bar since 1991 and has acquired specialized knowledge in the area of community association law. Counsel charged the respondent the hourly sum of $200 per hour. The arbitrator finds that this sum is not unreasonable given the hourly rates typically charged by attorneys with similar experience practicing in the community in which the condominium is located. Accordingly, the respondent will be reimbursed at the hourly rate of $200 per hour.

The respondent was originally represented by attorney Viota-Sezin who represented the respondent in the initial phase of the case through the filing of the answer. The petition for arbitration was filed below on November 2, 2001. Respondent filed a notice of substitution of counsel on March 7, 2002. Respondent has not sought reimbursement for charges by his former attorney, although his present attorney was paid for the time necessary for her to review the case file and history of the dispute. Current counsel's charges began to accrue on February 14, 2002.

The arbitrator has reviewed the work performed by counsel along with the time spent performing each activity in order to determine a reasonable expenditure of attorney's fees. Some adjustment is necessary in order to award a reasonable fee.

Counsel spent 13.5 hours preparing for the final hearing which lasted approximately 2-3 hours. The arbitrator finds that a reasonable preparation time for the final hearing is 8 hours. The issues involved were neither legally nor factually complex. Accordingly, 5.5 hours are deducted from the award. The remainder of the entries are found to be reasonable and necessary for the successful defense of the action.

Accordingly, the respondent is hereby awarded 27.1 hours of work paid at $200 per hour, for a total award of $5,420.00; the association shall pay this sum to the respondent within 30 days of the entry of this final order.

DONE AND ORDERED this 9th day of August, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 9th day of August, 2002:

Manuel J. Mari, Esquire
250 Bird Road, Ste. 200
Coral Gables, Florida 33146

Amy L. Koltnow, Esquire
Patyon & Carlson, P.A.
1200 Suntrust International Center
One Southeast Third Avenue
Miami, Florida 33131

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

Stone's Throw Condominium Association, Inc.,

Petitioner,

v. **Fee Case No. 02-5238**
Rel. Case No.02-4326

Catherine L. Gillette,

Respondent.
_____/

FINAL ORDER ON REQUEST FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for costs and attorney's fees on July 11, 2002. The association seeks an award of $3,940.50 representing 21.3 hours of attorney time billed at $185.00. The respondent filed her response to the petition on August 13, 2002.

The request for award of attorney's fees relates arbitration case number 02-4326, in which the association filed its petition seeking entry of a final order removing the respondent's dogs from the unit on the grounds that the dogs constituted a nuisance and health hazard. Specifically, it was alleged that the dogs have urinated on the balcony over a considerable period of time, damaging

the balcony structure and creating an unsanitary condition for those owners living below the balcony.

A final order was entered on June 3, 2002. The final order denied the association's request for removal of the respondent's dogs, finding that they did not create a nuisance based on their urination habits. The final order further denied the association's request for reimbursement of costs to repair the balcony concrete that had been soiled over the years by the dogs, finding that the association did not prove by expert testimony that the extreme deterioration of the balcony was caused specifically by dog urine soaking in over the years. However, the final order specifically found the barking of the dogs to constitute a nuisance, and the order required the dogs to wear muzzles to decrease their barking disturbance. The order also required the respondent to lock the "doggie door" leading from the unit to the balcony area when she was not in attendance at the unit. Finally, the final order required the respondent to sanitize and clean the balcony to remove odors to the satisfaction of the association.

The parties disagree on whether the association is the prevailing party. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 1983)). The association is deemed to be the prevailing party since it achieved a significant portion of the relief it sought. While removal of the dogs was not ordered, and while the respondent was not

charged with repairs needed to the concrete balcony, the fact remains that the respondent was ordered to muzzle the dogs, clean and sanitize the balcony, and to restrict the dogs' access to the balcony to only those times when respondent was present in the unit. Accordingly, the association prevailed on certain issues in the case. The respondent's attachments to her response in opposition to the association's motion for attorney's fees do not support the conclusion that she offered to muzzle her dogs in advance of the arbitration proceeding. It appears that sometime prior to the commencement of the proceeding, respondent offered to restrict access to the balcony. In addition, respondent's allegation that the association has failed to repair the railing on her balcony does not bear on the issue of whether the association is entitled to an award of attorney's fees.

The association in its motion for fees estimated that 90% of its time was spent on the dog removal/restraint issue while 10% was spent on the issue of damages to the balcony. The arbitrator upon review of the underlying file finds that the association prevailed on a majority of the issues for which the association should be reimbursed for 60% of its reasonable costs and fees.

The arbitrator finds as a preliminary matter that the hourly sum paid by the association is reasonable and comparable to the rates charged in these arbitration proceedings by attorneys of similar experience practicing in the area in which the condominium is located. Accordingly, the association will be reimbursed at the hourly rate of $185.

Next, the arbitrator has reviewed the individual activities undertaken by counsel as well as the length of time expended on each such activity. Without exception, the arbitrator finds that each activity undertaken was reasonably necessary for the successful prosecution of the association's case, and that counsel spent a reasonable amount of time on each such activity. The association is also entitled to the $50 filing fee as an item of costs.

Based on the foregoing, the association is awarded 12.78 hours (60% of 21.3 total hours) at $185 an hour, or $2,364.30, plus $50 in costs, for a total of $2,414.30. Respondent shall pay this amount to the association within 30 days of the entry of this final order.

DONE AND ORDERED this 19th day of August, 2002, at Tallahassee, Leon County, Florida.

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 19th day of August, 2002 to the following persons:

Michael J. Brudny, Esquire
Brudny & Rabin, P.A.
28100 U.S. North, Ste. 300
Clearwater, Florida 33761

Catherine L. Gillette
6916 Stones Throw Circle North
Unit 9301
St. Petersburg, Florida 33710

Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Sea Breeze South Apartments Condominium, Inc.,

Petitioner,

v. **Fees Case No. 02-5161**
Rel. Case No. 00-1734

Richard C. Beck and Sandra Beck,

Respondents.
_____/

FINAL ORDER DISMISSING PETITION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and issues this final order as follows:

On June 28, 2002, the association filed its motion for costs and attorney's fees seeking reimbursement for the costs and fees incurred in arb. case no. 00-1734. Respondents argue that the association is not entitled to an award of costs and fees due to the operation of s. 718.112(2)(a)2., F.S., providing in part that when a unit owner files a written inquiry by certified mail with the board, the board must respond within 30 days. Further according to this section, the failure by the board to provide a substantive response to the inquiry "precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry."

Respondents rely on a letter dated January 17, 2000 written by their attorney and directed to the board. The letter specifically identifies that it is being sent as a written inquiry pursuant to s. 718.112(2)(a)2., F.S. The letter asks 3 questions

including whether the windows are part of the unit or common elements; whether it is the association's obligation to maintain common element windows; and if the windows are part of the unit, what specification limitations govern the window assemblies that the owners may install.

In response to the argument by respondents that the association forfeited its entitlement to fees by failing to respond to the January 17 letter, the association does not argue that it ever responded to the January 17 letter. Instead, the association argues that the issue should not be whether the association responded to an isolated inquiry, but whether the respondents violated the declaration by installing unapproved windows.

The arbitrator cannot ignore the operation of the statute that requires that an association respond to written inquiries directed by the owners. The prescribed remedy for failing to respond is the forfeiture by the association of its costs and attorney's fees incurred in any proceeding arising out of the subject matter of the inquiry. The subject matter of the inquiry is replacement windows and specifications. The final order found that the respondents had installed nonconforming replacement windows without the permission of the board and ordered respondents essentially to replace the windows with windows within the design specifications approved by the board. It cannot be said that the questions framed in the January 17 letter did not give rise to the subsequent arbitration dispute, or that the proceeding did not arise out these questions. Accordingly, it is inescapable that the association, in not responding to the inquiry, by operation of the statute forfeited its right to collect costs and attorney's fees incurred in the arbitration proceeding.

Accordingly, based on the foregoing, the arbitrator hereby denies the motion for costs and attorney's fees.

DONE AND ORDERED this 9th day of September, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 9th day of September, 2002:

William G. Morris, Esquire
P.O. Box 2056
Marco Island, Florida 34146-2056

Frederick C. Kramer, Esquire
950 N. Collier Blvd., Ste. 201
Marco Island, Florida 34145

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES
IN RE: PETITION FOR ARBITRATION

Mirage Condominium Association, Inc.,

Petitioner,

v. **Fees Case No. 02-5440**
Rel. Case No. 02-4597

The Estate of Abilio Amargo, by and Through its Personal Representative to be named,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for costs and attorney's fees on August 21, 2002, seeking an award of $1,940 in attorney's fees[1] and $50 in costs. The respondent has been afforded an opportunity to file a response to the motion for fees and has declined to file an objection or other response.

In accordance with s. 718.1255, F.S., the prevailing party in an arbitration proceeding is entitled to an award of reasonable costs and attorney's fees from the other party. In the case below, a final order was entered granting the association the relief requested in the final order, and hence the association is found to be the prevailing party entitled by statute to an award of reasonable costs and attorney's fees.

[1] The association's total claim for fees is $2,560 which includes 3 additional hours of time estimated to conclude the fees matter, but there has been no record activity after the filing of the motion for fees, and there will be no hearing on the fees motion, and the 3 additional hours have accordingly been disregarded in this order.

Counsel billed the association at the hourly rate of $200, which the arbitrator finds to be a reasonable sum given that counsel has been a member of the Bar since 1982 and has obtained an emphasis in community association practice. Accordingly, the association will be reimbursed at the rate of $200 per hour.

Next, the arbitrator has examined the detailed billing sheets of counsel in order to ascertain that the activities undertaken by counsel were reasonable and necessary, and that counsel spent a reasonable period of time accomplishing each task. The arbitrator finds that with limited exception, the activities undertaken were necessary and related to the prosecution of this action, and that the time spent was reasonable in relation to the requirements of the particular task being performed. As to the activities undertaken from July 22, 2002 to August 12, 2002, which time period falls after the final order was entered but before preparation of the motion for attorney's fees, the arbitrator finds that the activities reported during this period were not incurred in the underlying arbitration proceeding which ended when the final order was entered hence these activities are disallowed. From August 17 to August 20, 2002, the association is awarded recovery for the .70 hour spent preparing its motion for fees.

In sum, then, from the 9.45 hours requested, the arbitrator deducts 2.25 hours and orders recovery for 7.2 hours billed at $200, or $1440, plus $50 in costs representing the filing fee, or $1,490. The respondent shall pay this amount to the association within 30 days hereof.

DONE AND ORDERED this 23rd day of September, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 23rd day of September, 2002:

Phillips, Eisinger, Koss & Brown, P.A.
4000 Hollywood Blvd.
Suite 265 South
Hollywood, Florida 33021

Dr. Maria de Lourdes Amargos
The Estate of Abilio Amargo
12600 S.W. 46th Street
Miami, Florida 33175

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

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

IN RE: PETITION FOR ARBITRATION

ROBERT T. OVANES and BERNARD V. LAROSE,

Petitioners,

v. Fees Case No. 02-5672
Rel. Case No. 02-5206

THE MARINA AT THE BLUFFS CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER ON ATTORNEY'S FEES

On October 8, 2002, the respondent filed a motion seeking an award of $4,030.00 in attorney's fees. The fee request relates to underlying arbitration case no. 02-5206. An order permitting response to the motion for fees was issued on October 9, 2002; both petitioners subsequently filed responsive pleadings.

Pursuant to section 718.1255(4)(k), Florida Statutes (1997), the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So.2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). This proposition applies even where there is no decision on the merits, the question of which party is the prevailing party must be

determined by the particular facts of the case and the timing of the act that caused the action to be dismissed. A party may be considered the prevailing party if the filing of the petition was the motivating factor or catalyst for the desired action and the action was required by law. See West Wind Estates Condominium Association, Inc. v. Becker, Arb. Case No. 94-0301F, Order on Motion for Attorney's Fees (August 15, 1995).

In the underlying case, the petition was filed on July 8, 2002. The respondent filed a motion to dismiss and an affidavit in support of the motion on August 5, 2002. The motion to dismiss noted that the petitioner Robert T. Ovanes was not a unit owner and sought his dismissal from the suit. Additionally, the motion alleged that the petitioners had failed to provide written pre-arbitration notice as required by Section 718.1255(4)(b)(1), Florida Statutes. On August 20, 2002, an order on respondent's motion to dismiss was entered dismissing Robert T. Ovanes as a party and requiring petitioner Larose to file supplemental information demonstrating that he had provided written pre-arbitration notice to the respondent. On August 21, 2002, the petitioner filed a letter admitting to the technical flaw in not providing written pre-arbitration notice to the respondent and requesting that the petition be dismissed without prejudice. The case was subsequently dismissed. Although a final order on the merits was not entered, in this case it is deemed that the respondent's motion to dismiss was the catalyst for the unit owner's action, and the benefit sought by the respondent was achieved.

Thus, the respondent is the prevailing party and is entitled to an award of fees and costs.

The association seeks compensation for the legal services of Christopher J. Schuster, Esquire, at the rate of $185.00 per hour and Michael J. Gelfand, Esquire, at the rate of $225.00 per hour. Mr. Schuster has been licensed to practice law in the State of Florida since May 2000. Mr. Gelfand has been licensed to practice law in the state of Florida since October 1982 and has extensive experience in the area of community association law. The requested rate of $185.00 per hour for services provided by Mr. Schuster exceeds the amount customarily awarded to attorneys with similar experience, therefore, the respondent will be awarded $150.00 per hour for his services. The rate requested for the services of Mr. Gelfand does not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the association will be compensated at the requested rate for Mr. Gelfand's legal services.

The arbitrator has reviewed the billing statement and finds that the 18.50 hours requested for Mr. Schuster's services are excessive and will be reduced to 6 hours. This case should have required only a minimal expenditure of time by the association's attorneys. Only three pleadings were filed: the motion to dismiss, the affidavit in support of the motion to dismiss and the motion for prevailing party attorney's fees. The issues in this case were neither novel nor complicated; therefore, the association will be reimbursed for 6.0 hours for the services

performed by Mr. Schuster. The association will be awarded 2.7 hours for the services of Mr. Gelfand. In sum, the association shall be awarded 6 hours at the rate of $150.00 per hour and 2.7 hours at the rate of $225.00 totaling $1,518.30 in attorney's fees.

It is therefore ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Robert T. Ovanes and Bernard V. Larose shall jointly and severally pay the sum of $1,518.30 to The Marina at the Bluffs Condominium Association, Inc.

DONE AND ORDERED this 29th day of October 2002, at Tallahassee, Leon County, Florida.

_____

Richard M. Coln, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 29th day of October 2002 to:

Robert T. Ovanes
2301 Marina Isle Way
Jupiter, FL 33477

Bernard Larose
59 The Laurels
Enfield, CT 06082

Christopher J. Schuster, Esq.
Gelfand & Arpe, P.A.
250 South Australian Ave
West Palm Beach, FL 33401-5014
Attorney for Respondent

_____
Richard M. Coln, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

MIDDLE RIVER VILLAS
CONDOMINIUM, INC.,

Petitioner,

v.

Fee Case No. 02-4517
Rel. Case No. 01-3998

BARBARA SCOTT-JOHNSON,

Respondent.
_____/

FINAL ORDER DENYING ATTORNEY'S FEES AND COSTS

On February 18, 2002, Middle River Villas Condominium, Inc. (petitioner/association) moved for an award of $1,097.25 in attorney's fees and $88.35 in costs, totaling $1,185.60. On February 19, 2002, Barbara Scott-Johnson (respondent) moved for an award of $920.00 in attorney's fees and $78.74 in costs, totaling $998.74. The fee requests stem from arbitration case number 02-4623. In the underlying case, the association alleged that Barbara Scott-Johnson was keeping a dog in her unit without prior approval of the board, in violation of Article 8, Paragraph 8.3 of the declaration of condominium. The matter was dismissed as moot, because during the pendency of the action, the dog that was the subject of the dispute died, thereby mooting the issues raised in the petition. Both parties filed answers to the opposing party's motion for attorney's fees and costs. On January 8, 2002, a final order of dismissal was entered.

Pursuant to Section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). In the instant case, the removal of "Mike the dog" from the unit had nothing whatsoever to do with the initiation of the arbitration proceedings. "Mike the dog" was removed from the unit due to his death and not in response to any motion, order, or ruling entered in this matter. Accordingly, where the pet that is the subject of an arbitration dispute dies of natural causes, thereby mooting the issue prior to the entry of an order awarding relief, no party has prevailed and neither the petitioner nor the respondent is entitled to an award of attorney's fees and costs. See e.g., Costa Del Sol Condominium Association, Inc. v. Thomas, Arb. Case No. 97-2050, Final Order on Motions for Award of Attorney's Fees (March 24, 1998).

Based upon the foregoing, it hereby ORDERED that both the petitioner's and the respondent's motions for attorney's fees and costs are DENIED.

DONE AND ORDERED this 7th day of October 2002, at Tallahassee, Leon County, Florida.

_____
Richard M. Coln, Arbitrator
Arbitration Section

Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 7th day of October 2002 to:

Rachel E. Frydman, Esquire
Katzman & Korr, P.A.
5581 W. Oakland Park Boulevard
Second Floor
Lauderhill, FL 33313

Douglas H. Reynolds, Esquire
Douglas H. Reynolds, P.A.
4875 N. Federal Highway
10th Floor
Fort Lauderdale, FL 33308

_____
Richard M. Coln, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

PARADISE LAKES RV PARK
CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. Fee Case No. 02-5571
Rel. Case No. 02-4832

LLOYD QUALLS,

Respondent.
_____/

FINAL ORDER AWARDING COSTS

On September 17, 2002, Paradise Lakes RV Park Condominium Association, Inc. (petitioner/association) moved for an award of $195.58 in costs. The fee request stems from arbitration case number 02-4832. The petitioner was not represented by an attorney and, therefore, did not incur attorney's fees. The $195.58 requested by the association represents costs incurred for copying, postage, long distance and fax charges, secretarial costs, and filing fee.

In the underlying case, the association alleged that Lloyd Qualls, had modified the common elements without board permission and was keeping a dog in his unit, in violation of Sections 7.1(a)1 and 12.11 of the Declaration of Condominium. On July 31, 2002, a final order was entered requiring the respondent to remove the dog from his unit and to restore the common elements to their original condition.

Pursuant to Section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable

attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The respondent was ordered to remove the dog from his unit and to restore the common elements to their original condition. The association achieved the benefit it sought when initiating this case; therefore, the association is the prevailing party and is entitled to an award of costs.

The association seeks recovery for $195.58 for costs associated with this matter. Rule 61B-45.048(2)(d), Florida Administrative Code, provides that in making an award of costs, the arbitrator shall follow Florida case law and the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. These authorities do not support an award of costs to cover postage, long distance, fax charges and other routine office expenses. However, in Malone v. Pebble Springs Condominium Association, Inc., Arb. Case No. 00-1934, Final Order on Motion for Costs (March 13, 2001), the arbitrator awarded an unrepresented unit owner $80.00 for postage, supplies, long distance charges and fax expenses incurred in prosecuting the arbitration petition. The arbitrator indicated that the rationale for not awarding these costs in conjunction with an award of attorney's fees—that these costs are ordinary office expenses that are covered by an attorney's hourly rate—does not apply where an individual represents his or herself. This reasoning is adopted, and the petitioner's costs will be awarded.

The entries listed on association's billing statement reflect reasonable expenditures necessary to successfully litigate this case. The association is, therefore, awarded $195.58 in costs.

It is ORDERED:

1. The motion for costs is GRANTED.

2. Within 30 days of the date of this order, Lloyd Qualls shall pay the sum of $195.58 to Paradise Lakes RV Park Condominium Association, Inc.

DONE AND ORDERED this 4th day of November 2002, at Tallahassee, Leon County, Florida.

_____

Richard M. Coln, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 4th day of November 2002 to:

Paradise Lakes RV Park
C/O Daniel M. Nemeth

1901 Brinson Road
Unit G13
Lutz, FL 33558

Lloyd Qualls
P.O. Box 2465
Land O'Lakes, FL 34639

_____
Richard M. Coln, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

ROBERT T. OVANES and BERNARD V. LAROSE,

Petitioners,

v.

Fees Case No. 02-5672
Rel. Case No. 02-5206

THE MARINA AT THE BLUFFS CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

ORDER DENYING MOTION FOR REHEARING

On November 4, 2002, the petitioner Larose filed a motion for rehearing of the arbitrator's order awarding attorney's fees and costs entered on October 29, 2002. In his motion for rehearing, the petitioner Larose argues for the first time that because the petitioner failed to provide pre-arbitration notice, the petition should have been dismissed prior to the respondents having to respond to the issues raised therein. The provision of pre-arbitration notice is not a jurisdictional matter, it is an affirmative defense that must be raised by the respondent or it is deemed waived. Therefore, the petitioner's claim that his petition should have been dismissed prior to the entry of the order requiring answer is without merit.

Accordingly, the petitioner Larose's motion for rehearing or reconsideration is DENIED.

DONE AND ORDERED this 12th day of November 2002, at Tallahassee, Leon County, Florida.

_____

Richard M. Coln, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, FL 32399-1029

Copies provided by U.S. mail to:

Robert T. Ovanes
2301 Marina Isle Way
Jupiter, FL 33477

Bernard Larose
59 The Laurels
Enfield, CT 06082

Christopher J. Schuster, Esq.
Gelfand & Arpe, P.A.
250 South Australian Ave
West Palm Beach, FL 33401-5014
Attorney for Respondent

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

IN RE: PETITION FOR ARBITRATION

Laura and John Wooley,

Petitioners,

v.

Fees Case No. 02-5474
Rel. Case No. 02-4469

Ocean Inlet Yacht Club
Condominium Association, Inc.,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

The association filed its motion for costs and attorney's fees in this matter on August 27, 2002. The association seeks an award of $3,962.50 for work undertaken in the underlying arbitration case. This includes 3.7 hours spent by legal assistants and 23.8 hours for attorney activities. In the earlier arbitration case, a final order dismissing petition was entered on July 25, 2002. The final order determined that the petitioners were bound by an earlier arbitration decision declaring that the expenses of maintaining the boat basin were a common expense to be shared by all owners in the condominium.

Section 718.1255, F.S. mandates that the prevailing party in an arbitration proceeding be awarded reasonable costs and attorney's fees. It is not necessary for an action to be heard and determined on the merits in order for a prevailing party to be found. In Landmark Oaks Association, Inc. v. Rice, Arb. Case No. 96-011F, Final

Order (July 9, 1996), the arbitrator determined the respondent to be the prevailing party where the case was dismissed for lack of jurisdiction. In Pine Ridge at Palm Harbor Condominium Association, Inc. v. Mouradian, Arb. Case No. 99-0119, Final Order (April 20, 1999), the arbitrator ruled that where the case was dismissed for lack of the pre-arbitration notice required by statute, the respondent was the prevailing party since the case was dismissed. Here, the association, respondent below, was the prevailing party because the case was dismissed. No relief requested by the petitioners was awarded. Therefore, the association will be awarded its reasonable costs and attorney's fees.

The association seeks reimbursement at a weighted average hourly figure of $144.09. The arbitrator finds that this sum is reasonable given the experience of counsel, the region in which the condominium is located, and the amounts charged by attorneys with similar experience practicing in the community in which the condominium is located. Accordingly, the association will be reimbursed at this hourly figure.

The sum of 23.8 hours for attorney time spent where a case was dismissed at the outset sounds potentially excessive. It will be necessary to examine the various components of the time and activity sheets. The association spent 7.7 hours analyzing the petition for arbitration, performing research, and drafting its answer to the petition. This amount is not shown to be unreasonable. The issues presented by the petition were somewhat novel regarding standing, collateral estoppel, and res judicata, and this required additional preparation, research, and attorney time. The arbitrator has also examined the time spent on the association's memorandum of law

that counsel spent 6.4 hours on. Again, given the nature of the issues presented, this amount is not unreasonable. The arbitrator has also examined the remaining entries and finds that with the limited exceptions noted below, the work undertaken by counsel for the association was necessary for the proper defense of this action, and further finds that the times spent on each such activity is shown to be reasonable.

The arbitrator will deduct from the 1.10 hours generated on July 25, 2002, .60 hour spent research or preparing for a trial de novo; this activity was undertaken not in connection with the instant proceeding but relates to a possible appeal in the courts. In addition, the arbitrator deducts .70 hour from the activities undertaken on June 17, 2002, relating to preparation of the motion for default. Petitioners timely filed their memorandum and it was not necessary to prepare a motion for default.

With reference to costs, all of the costs paid by the respondent except for Westlaw expenses are ordinary office expenses not subject to reimbursement under the uniform rules. Accordingly, the association will be awarded $53.55 in costs.

In total, the petitioners are responsible for paying the sum of $3,843.12 to the association, within 30 days of the date of this final order. This sum consists of $53.55 in costs, along with 26.3 hours of attorney time, billed at the composite hourly rate of $144.09.

DONE AND ORDERED this 13th day of November, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and

Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 13th day of November, 2002:

Russell E. Klemm, Esquire
Clayton & McCulloh, P.A.
1065 Maitland Center Commons Blvd.
Maitland, Florida 32751

Ms. Laura Wooley
204 Mary Avenue
New Smyrna Beach, Florida 32168

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

Copy furnished:
Mary D. Hansen, Esquire
Storch, Hansen & Morris, P.A.
420 South Nova Road
Daytona Beach, Florida 32114

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

IN RE: PETITION FOR ARBITRATION

Kenneth Richardson, et al.,

Petitioners,

v. Fees Case No. 02-5207
Rel. Case No. 02-4354

Jupiter Bay Condominium
Association, Inc.,

Respondent.
_____/

FINAL ORDER ON MOTION FOR ATTORNEY'S FEES

Comes now, the undersigned arbitrator, and enters this final order as follows:

Petitioners moved for an award of costs and attorney's fees on July 8, 2002. Petitioners seek reimbursement in the amount of $19,500 representing 65 hours of attorney time billed at $300 per hour. On July 16, 2002, the association filed a response to the motion and argued that the timesheets of counsel included billings for work performed in a related court action, argued that the hourly sum paid is excessive, and that an excessive amount of time was spent on individual tasks. On September 4, 2002, petitioners filed a request to be awarded an additional $6,030 for work undertaken (20.10 hours) in connection with a motion for rehearing filed by the association in the main case as well as for defending their fees motion.

The petition for arbitration below was filed on January 24, 2002. Petitioners

sought entry of a final order declaring that the bylaws setting forth a limitation on rental terms was invalid, and prohibiting the association from in any way interfering with the leasing of units or dictating the terms of those leases.

A summary final order was entered on July 3, 2002 finding that the bylaw setting forth minimum lease terms was inconsistent with the declaration and was thus invalid, that the Woodside case did not revive the fallen bylaw, and that the statute of limitations did not bar the instant action. In a final order on rehearing entered on August 26, 2002, the arbitrator clarified that certain of the bylaw amendments were valid and ruled that the association had the right to require that leases be in writing and filed with the association prior to occupancy by the tenant. It was further ruled that the association could not charge the $75 processing fee it had been charging.

Section 718.1255, F.S., provides that the prevailing party in an arbitration proceeding is entitled to recover its reasonable costs and attorney's fees from the other party. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 1983)).

Petitioners are deemed to be the prevailing party since they achieved a significant portion of the relief sought. While petitioners did not receive all the relief sought; as the association is still involved in the leasing process, its role is greatly diminished and the arbitrator finds that the issues that the petitioners did

not outright prevail on were subsumed within the legal work performed on the major issues that they prevailed upon. Therefore, the arbitrator will not apportion or discount the aggregate fees on this basis.

Petitioners' counsel was paid the sum of $300 per hour. He has 32 years of experience as an attorney. The arbitrator finds that this sum exceeds the sums typically charged by attorneys with similar experience providing representation in proceedings brought pursuant to s. 718.1255, F.S. in the community in which the condominium is located. Petitioners shall be compensated at the rate of $225 per hour which takes into account these factors along with the degree of complexity of the case, the nature of the issues involved, and other relevant factors.

The arbitrator has examined the billing entries of counsel for the petitioners. The arbitrator will only award for costs and fees incurred *in the arbitration proceeding*. Fees generated prior to the preparation and filing of the petition are not incurred in the proceeding, and are not awarded. This includes those instances in which fees are incurred in a related court action. See, Aspenwood at Grenelefe Condominium Association, Inc. v. Schifano, Arb. Case No. 95-0119F, Final Order (September 18, 1995). The petition was filed below on January 24, 2002. The first billing entry corresponding to work undertaken in connection with the petition for arbitration is dated December 3, 2001. No work performed and reported prior to that time was undertaken in the arbitration proceeding and none will be awarded prior to that date. This results in a deduction of 35.4 hours.

Some adjustment is also required on other entries. First, on April 3 and 9,

2002, there is a consultation with an expert witness and a telephone call with an attorney not of record in this proceeding totaling 1.20 hours. These will be disallowed as not incurred in this proceeding. Next, the preparation of the response to the order to show cause is shown as entailing 5.8 hours; this will be reduced to 4.0 hours considering the length of the pleading and the degree of preparation and research required. Next, the entries corresponding to June 11 and 13, 2002, whereby 1.20 hours was spent with another attorney and an expert witness, are disallowed. The July 5, 2002 entry of .50 hour for speaking with Attorney Tassel is not shown to be related to this action and is not allowed.

Turning now to petitioners' supplemental motion for fees, the .20 hour spent with Mr. Tassel is disallowed, as are the expert witness telephone conversation of July 10 (.30 hour), the July 18 conversation with Mr. Tassel for .20 hour, and the 1.1 hour spent researching a trial de novo.

With these exceptions, the arbitrator finds that the work undertaken was incurred in this action, was necessary for the prosecution of this action, and was accomplished in a reasonable time. Based on the foregoing, petitioners are awarded for 43.2 hours ([65 + 20.10]-41.9), multiplied by $225 per hour, leaving a total fee award of $9,720, plus costs of $50, yielding a total recovery of $9,770. The association shall pay this sum to the petitioners within 30 days of entry of this final order.

DONE AND ORDERED this 1st day of November, 2002, at Tallahassee, Leon County, Florida.

_____
Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 1st day of November, 2002:

John L. Avery, Esquire
1001 N. U.S. Highway One, Ste. 207
Jupiter, Florida 33477

Keith F. Backer, Esquire
136 East Boca Raton Rd.
Boca Raton, Florida 33432

_____
Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

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

IN RE: PETITION FOR ARBITRATION

LARS HOLFVE,

Petitioner,

v. Fee Case No. 02-5714
Rel. Case No. 02-5205

OCEAN PARK NORTH CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

On October 18, 2002, Ocean Park North Condominium Association, Inc. (respondent/association) moved for an award of $1,577.50 in attorney's fees and $75.18 in costs, totaling $1,652.68. The fee request stems from arbitration case number 02-5205. In the underlying case, Lars Holfve alleged that association had altered the common elements without proper approval and had failed to properly conduct association meetings. In the underlying case, the association moved to dismiss the petition for arbitration for the petitioner's failure to provide pre-arbitration notice to the association. A final order of dismissal was entered on September 4, 2002, based upon the petitioner's failure to comply with the provisions of Section 718.1255(4)(b)(1), Florida Statutes.

Pursuant to Section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable

attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). This proposition applies even where there is no decision on the merits, the question of which party is the prevailing party must be determined by the particular facts of the case and the timing of the act that caused the action to be dismissed. A party may be considered the prevailing party if the filing of the petition was the motivating factor or catalyst for the desired action and the action was required by law. See West Wind Estates Condominium Association, Inc. v. Becker, Arb. Case No. 94-0301F, Order on Motion for Attorney's Fees (August 15, 1995). Although a final order on the merits was not entered, in this case it is deemed that the respondent's motion to dismiss brought about the dismissal of the petition, and thus the benefit sought by the respondent was achieved. Thus, the respondent is the prevailing party and is entitled to an award of fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the

hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The association seeks compensation for the legal services of Alex C. Costopoulos, Esquire, at the rate of $175.00 per hour and for Carter J. Christensen, Esquire, at the rate of $200.00 per hour. Alex Costopoulos has been licensed to practice law in the State of Florida since September 1990 and has experience in community association law. Carter Christensen has been licensed to practice law in the State of Florida since 1987. The requested rates do not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the respondent will be compensated at the requested rates for counsel's legal services. See Sea Breeze South Apartments Condominium Association, Inc. v. Beck, Arb. Case No. 02-5161, Final Order Awarding Attorney's Fees and Costs (August 27, 2002) (Where attorney had been admitted to practice in 1997 and had experience in the field of condominium law, the $175 per hour requested for the attorney's services did not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience.)

The association seeks recovery for 7.1 hours for activities performed by counsel. All the entries listed on the billing statement reflect reasonable expenditures of time to successfully litigate this case and are awarded.

The association requests compensation for $50.00 for an expert witness fees and $25.18 for copy costs. The copy costs are ordinary office expenses and is disallowed. As the case was dismissed for failure to provide pre-arbitration notice an

expert's testimony was unnecessary to successfully defend this action. Accordingly, the request for an expert witness fee is denied.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Lars Holfve shall pay the sum of $1,577.50 to Ocean Park North Condominium Association, Inc.

DONE AND ORDERED this 27th day of November 2002, at Tallahassee, Leon County, Florida.

_____

Richard M. Coln, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, this 27th day of November 2002 to:

Lars Holfve
350 Taylor Avenue #B5
Cape Canaveral, FL 32920
Petitioner

Alex Chris Costopoulos, Esq.
Becker & Poliakoff, P.A.
2500 Maitland Center Parkway
Suite 209
Maitland, FL 32751
Attorney for Respondent

_____
Richard M. Coln, Arbitrator

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

IN RE: PETITION FOR ARBITRATION

CROTON HARBOR CONDOMINIUM, INC.,

Petitioner,

v.

Fee Case No. 02-5705
Rel. Case No. 02-4806

ABDON RUSOLEN,

Respondent.
_____/

FINAL ORDER AWARDING ATTORNEY'S FEES AND COSTS

At the conclusion of the underlying case, the Petitioner Croton Harbor Condominium, Inc., moved for an award of $2016.50 in attorney's fees and $50.00 in costs, totaling $2066.50. The fee request relates to arbitration case number 02-4806, in which case the Petitioner alleged that the Respondent was harboring a dog in violation of the rules and regulations of the association. After the commencement the underlying action, the respondent removed the subject dog. A final order was entered, acknowledging the removal of the dog, and directing the Respondent not to reintroduce the dog.

Pursuant to section 718.1255(4)(k), Florida Statutes, the prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. A party is a "prevailing party" if it succeeds on a significant issue in the arbitration and achieves some of the benefit sought in bringing the action. See Moritz v. Hoyt

Enterprises, Inc., 604 So. 2d 807, 809 (Fla. 1992) (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). The association achieved the benefit it sought when initiating this case because the respondent removed the dog and was instructed not to reintroduce it in to the condominium. Therefore, the association is the prevailing party and is entitled to an award of attorney's fees and costs.

The next issue to be decided is the reasonableness of the attorney's fees and costs claimed by the association. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court adopted the federal lodestar approach as the foundation for setting reasonable fee awards. This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." Fashion Tile & Marble v. Alpha One Construction, 532 So. 2d 1306 (Fla. 2nd DCA 1988). In undertaking this analysis, the reasonableness of the hourly rate and the number of hours reasonably expended must be separately considered. See Rowe, 472 So. 2d at 1150-51.

The association seeks compensation for the legal services of Edward Dicker, Esquire, at the rate of $185.00 per hour. Counsel has extensive experience in the area of condominium law. The requested hourly rate dose not exceed the amount customarily awarded for representation in similar arbitration proceedings by attorneys with similar experience; therefore, the hourly fee is awarded at the requested rates.

The association seeks recovery for 11.6 hours for activities performed by Mr. Rabin. The time sheets presented show 1.5 hours of attorney time for "future activities." This time is not recoverable, as it did not advance the litigation. Recovery of attorney's fees pursuant to Section 718.1255, Florida Statutes, is restricted to fees incurred *in the arbitration proceeding*. See Desy v. River Key Condominium Association, Inc., Arb. Case No. 93-0082F, Final Order (May 20, 1993).

The association requests compensation for $50.00 in costs. Those costs represent the filing fee ($50) which is recoverable as part of the cost of this action. Therefore, the Petitioner is awarded the $50 in costs.

It is ORDERED:

1. The motion for attorney's fees and costs is GRANTED in part.

2. Within 30 days of the date of this order, Abdon Rusolen (respondent) shall pay the sum of $1918.50 to Croton Harbor Condominium Association, Inc (petitioner).

DONE AND ORDERED this 27th day of December 2002, at Tallahassee, Leon County, Florida.

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Peter Gioia, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT FOR TRIAL *DE NOVO* IS FILED BY AN ADVERSELY AFFECTED PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING OF THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, to Edward Dicker, Esq., Dicker, Krivok & Stoloff, P.A., 1818 Australian Avenue South, Suite 400, West Palm Beach, FL, 33409 and Christian N. Scholin, Esq., 505 South Flagler Drive, Suite 400, West Palm Beach, FL, 33401 , this 27th day of December 2002.

_____
Peter Gioia, Arbitrator