

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

IN RE: PETITION FOR ARBITRATION

ANTOINETTE G. ALDECOA,

Petitioner,

v.

Case No. 98 2732

BAHIA MAR OF KEY BISCAYNE
CONDOMINIUM ASSOCIATION, INC.

Respondent.

_____ /

SUMMARY FINAL ORDER

Upon review of the pleadings, the arbitrator enters the following final order:

On January 9, 1998, Antoinette G. Aldecoa (Petitioner), a condominium unit owner, filed a petition for arbitration against Bahia Mar of Key Biscayne Condominium Association, Inc. (Respondent). On February 26, 1998, Respondent filed an answer. On March 5, 1998, two unit owners filed a letter stating that they would like to submit documentation supporting their position.¹ On March 11, 1998, the undersigned entered a notice of reassignment of arbitrator.

¹These unit owners believe that the proper number of board members should be 5.

Petitioner is claiming that Respondent improperly conducted the 1998 annual election by failing to seat the 7 candidates when there were 7 vacancies, that Respondent improperly attempted to change the number of elected board members from 7 to 5 in the middle of 1997,² and that Respondent improperly conducted the 1998 election by failing to determine the number of board members by the number of candidates. It is appropriate at this time for the undersigned to determine the proper number of board directors for the condominium.

In Norberto Cartagena v. Hilltop Condominium Association, Inc., Arb. Case No. 93-0022, Final Order (June 17, 1993), the arbitrator addressed the issue of whether the number of seats on the board floated between 3 and 15 depending solely on the number of candidates, or whether the number of seats had been set at 5. Nine candidates had been qualified for the annual election. Pursuant to the articles of incorporation, the affairs of the association were managed by a board of not less than 3 nor more than 15 directors as determined by the bylaws. The bylaws provided that the number of directors shall not be less than 3 nor more than 15 persons. During the history of the board, the number of board seats never floated depending on the number of candidates, but had been set at 11 members for several years, 13 members for one year, and 5 members for the most recent fifteen years. There was no written record of why the board size was set at 5 members. The petitioning unit owner wanted the size of the board to depend on the number of candidates for the board. As support for his position, he cited Section 718.112(2)(d)3, Florida Statutes, which provides:

²Included in this claim are allegations that the board improperly decided not to fill the 2 board vacancies which occurred through vacancies early in 1997; that the board did not actually hold a vote on reducing the number of directors at an April 1997 board meeting, notwithstanding the fact that the minutes state that a vote was taken; and that an unnoticed board meeting was held in August 1997, where the board, by less than a majority, decided to reduce the number of directors for the 1998 election from 7 to 5.

Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notice of intent to run or are nominated than vacancies exist on the board.

The association argued that the number of seats on the board never floated depending on the number of candidates. The arbitrator found that the intent of the articles of incorporation was to permit the bylaws to specify a set number of board members, as long as it was in the range of 3 to 15 directors, however, the bylaws failed to specify a set number, but instead repeated that the number of directors was to be between 3 and 15. Since the bylaws did not specify a number of directors, the arbitrator concluded that in the absence of such a provision, the board must be set at 5 directors pursuant to Section 718.112(2), Florida Statutes, which provides:

REQUIRED PROVISIONS.-The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(a) *Administration.-*

(1)The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, of any, of officers and boards. *In the absence of such a provision, the board of administration shall be composed of five members. . . . (emphasis supplied)*

The following provisions of the condominium documents relevant to the instant case are not in dispute. Article V of the articles of incorporation provides:

The affairs of the Association shall be managed by a *Board of Directors* as provided in the By-Laws, *consisting of not less than three members. . . .*

Article V of the bylaws provides:

The business of this Association shall be managed by a *Board of Directors consisting of no less than three and no more than seven members. . . .*

When these two provisions are read together, it is apparent that the intent of the articles of

incorporation was to permit the bylaws to specify the number of director seats. However, the bylaws do not specify a number of director seats, but instead provide a range of 3 to 7 seats. Based upon the fact that the bylaws fail to specify a number of seats, the arbitrator adopts the reasoning in Cartagena, supra., and concludes as a matter of law that the in absence of such a provision specifying the number of director seats, the number of seats of the board is 5, pursuant to Section 718.112(2)(a)(1), Florida Statutes.³

The material facts in the case are not in dispute. During the election for the 1998 board, 7 candidates ran for office and a board of 5 was seated. As determined above, the board is properly comprised of 5 members as a matter of law. Accordingly, Petitioner's claims that the board improperly held an election when there were 7 vacancies and 7 candidates, that the board improperly attempted to change the size of the board from 7 to 5 members in 1997⁴, and that the board

³This number of directors can be changed if the bylaws of the association are amended.

⁴Included in this claim were the allegations that the board made decisions without a majority vote, that the board improperly decided not to fill 2 vacant director positions in 1997, and that the board did not properly notice a meeting. As the board is properly composed of 5 members, Petitioner's allegations, that decisions were improperly made by a vote of 3 members and that the board improperly failed to fill the 2 vacant director seats to complete board size of 7, are now moot. However, the allegation that the board had not properly noticed a meeting could constitute a dispute on its own. Since this allegation is not a claim, but instead is an allegation in the main claim of the dispute, it cannot be pursued. However, if the board does not properly

improperly conducted the 1998 election by failing to determine the number of board members by the number of candidates, are dismissed for a failure to demonstrate a preliminary basis for relief.

It is therefore ORDERED and ADJUDGED that:

The petition is dismissed for the reasons described above.

DONE this 30th day of March, 1998 at Tallahassee, Leon County, Florida.

William Oglo, Arbitrator
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1030

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 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 SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by U.S. Mail to: Antoinette G. Aldecoa, 650 Ocean Dr., Apt. 10E, Key Biscayne, FL 33149, Petitioner; Carlos A.

notice meetings in the future, this might form the basis for members to file a new petition .

Triay, Esq., 999 Ponce de Leon Blvd., #1110, Coral Gables, FL 33134, attorney for Respondent; Dr. Alma Trapolini M.D., 650 Ocean Dr., Apt. 11-A, Key Biscayne, FL 33149-2321; and Manuel A. Castilla, 650 Ocean Dr., Apt. 4-C, Key Biscayne, FL 33149-2321; on this 30th day of March, 1998.

William Oglo, Arbitrator