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

IN RE: PETITION FOR ARBITRATION

REYNOLD L. GLANZ,

Petitioner,

v.

Case No. 2019-01-5048

HIDDEN LAKE OF MANATEE OWNERS ASSOCIATION, INC.,

Respondent.
_____/

SUMMARY FINAL ORDER

Statement of the Issue

The issue in this case is whether Reynold L. Glanz (Petitioner) improperly was denied a seat on the board of directors (board) after the contested annual election because of his consecutive years of service on the board.

Salient Procedural History

On March 22, 2019, Petitioner filed his petition for mandatory non-binding arbitration against Hidden Lake of Manatee Owners Association, Inc. (the Association). After an extension of time was granted, the Association filed an Answer on April 25, 2019. After rescheduling, at the parties' request, a Hearing for Case Management (HCM) was held on May 24, 2019. By Order entered on July 29, 2019, the case was abated. On August 8, 2019, Petitioner filed an objection to the abatement. On October 15, 2019, the Association filed a notice stating that the Association's annual meeting and election was to take place on January 21, 2019.

Findings of Fact

1. The Association is the corporate entity responsible for the operation of Hidden Lake Condominium.

2. Petitioner is the owner of a unit within the condominium.

3. On January 11, 2019, the Association held its annual meeting and election (AM&E) for seats on the Association's five-member board of directors. There were seven candidates for the five seats. Petitioner was one of the seven candidates.

4. The vote count for seats on the board was as follows:

Jack Gergel	42
Reynold (Ren) Glanz	42
Charlie Puccia	42
Jillian (Jill) Rodrian	41
Martin Dimovski	41
Tim Connolly	40
Ralph Hunt	37

5. At the AM&E, Petitioner garnered a sufficient number of votes to be seated on the board.

6. The parties do not dispute that Petitioner had served on the board more than eight consecutive years at the time of the election.

7. Petitioner was not seated on the board based upon a 2018 amendment to Section 718.111 (2)(d)2., Florida Statutes. The 2018 amendment to Section 718.111 (2)(d)2. reads as follows, in pertinent part:

> A board member may not serve more than 8 consecutive years ~~four consecutive 2-year terms~~, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election ~~the total voting interests of the association~~ or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

s. 2, 2018-96 Laws of Fla.; CS/CS/CS HB 841.[1] The law took effect July 1, 2018. *Id.* at s 17. There is no language at any place in the bill that became law making retroactive the amendment set out above.

8. On September 14, 2018, the Division of Florida Condominiums, Timeshares and Mobile Homes filed its *Declaratory Statement in The Apollo Condominium Association, Inc.*, DS 2018-035, File # 2018-07582 (*Apollo*).

9. On September 30, 2019, the Division of Florida Condominiums, Timeshares and Mobile Homes filed its *Final Order Denying Petition for Declaratory Statement in Louis Brindisi, unit owner, Tiara Condo. Ass'n, Inc.*, DS 2019-045, File # 2019-08328 (*Brindisi*).

Conclusions of Law

The Association is an association within the meaning of Section 718.103, Florida Statutes. Pursuant to Section 718.1255, Florida Statutes, the undersigned has jurisdiction over the parties to, and the subject matter of, this dispute. If no disputed issues of material fact exist, the arbitrator may enter a summary final order. Fla. Admin. Code R. 61B-45.030.

In *Apollo*, the Association sought a declaratory statement as to the applicability of the eight consecutive years of service term limit to a board member who was on the board at the time the amendment became effective and who would be running in the 2019 election occurring after the amendment's effective date and who would have served eight consecutive years at the time of such election. The Division opined that the board member would be ineligible to serve because the eight consecutive year term limit includes years of service prior to the effective date of the amendment, rather than

[1] The enrolled bill was approved by the Governor on March 23, 2018.

only to those years thereafter. In essence, the Division, without citing to any legal authority other than the amendment itself and without any retroactive provision in the bill, opined that the eight consecutive year term limit amendment applied retroactively to a board member currently in office at the time the amendment took effect.

In *Brindisi,* unit owner Louis Brindisi sought a Declaratory Statement relating to the applicability of the 2018 statutory amendment to his particular circumstances which circumstances are similar to those in the *Apollo* Declaratory Statement. The Division declined to render a declaratory statement concluding:

> 5. A declaratory statement is not an appropriate remedy where there is related pending litigation, as exist [sic] in this case. Couch v. Fla. Dep't of Health and Rehabilitative Services, 377 So. 2d 32 (Fla. 1st DCA 1979); see also Fox v. State of Osteopathic Medical Examiners, 395 So. 2d 192 (Fla. 1st DCA 1981) (holding that it is appropriate to deny a petition for declaratory statement where issues raised are currently pending in administrative hearings). The issues raised in the Petition are currently pending litigation in arbitration case no. 2019-02-7502. Therefore, ongoing litigation precludes the Division from answering the Petition.

Arbitration cases arising pursuant to Section 718.1255, Florida Statutes, which is how the instant arbitration case arises, are not administrative proceedings under chapter 120 and do not involve administrative hearings under chapter 120 which is how the cases cited in *Brindisi* arose. Section 718.1255(4) specifically provides, "(4) . . . The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action [under chapter 120]." Therefore, the Division was not precluded from rendering a Declaratory Statement as requested by Mr. Brindisi because arbitration does not involve a chapter 120 administrative proceeding.

Legal Analysis

In pertinent part, Section 1.2 of the Declaration of Condominium (Declaration)

provides, "The Developer hereby submits . . . [the land and improvements] to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof. Section 2.1 of the Declaration, provides the following definition, "[']Act[']means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof." The Declaration was executed on June 6, 2005, and recorded on June 15, 2005. Thus, the Declaration in the instant case explicitly adopts the Condominium Act, Chapter 718, as it existed in 2005, as the statutes governing the Association, and the Declaration explicitly does not adopt amendments to the Condominium Act made thereafter.

Given Sections 1.2 and 2.1 in the Declaration, the Association and its members are not subject in any way to the term limit provision in the 2018 amendment to Section 718.111 (2)(d)2. because the Declaration does not contain "Kaufman language," and in 2005, Section 718.111 (2)(d) did not contain any term limit provision. *See Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d DCA 1977), *cert. denied*, 355 So. 2d 517 (Fla. 1978) (The language of the Declaration in *Kaufman* adopted, "the provisions of the Condominium Act as presently existing, or as it may be amended from time to time;" therefore, given the lack of ambiguity in the language, it was the express intention of all parties concerned that the provisions of the Condominium Act were to become a part of the controlling document whenever they were enacted.).

Given the conclusion that Chapter 718 as it existed in 2005, which does not contain any term limit provision, controls, the Association's defenses need not be addressed because they argue that the term limit amendment should apply

retroactively.[2] Based upon all of the foregoing, it is

ORDERED:

1. The abatement of the instant arbitration case is lifted; and

2. Tim Connolly is removed from the board, and Reynold L. Glanz shall fill the vacant seat resulting from the removal of Tim Connolly for the unexpired term of the seat.

DONE AND ORDERED this 6th day of November, 2019, at Tallahassee, Leon County, Florida.

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Trial *de novo* and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed within 30 days in accordance with Section 718.1255(4)(k), Florida Statutes and Rule 61B-45.043, Florida Administrative Code. As provided by Section 718.1255, Florida Statutes, the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, Florida Administrative Code.

[2] The defenses argue: Petitioner is ineligible to serve due to the 2018 term limit amendment; the 2018 term limit amendment should apply retroactively; and the 2018 Declaratory Statement in *Apollo* should apply. The Association also asserts as a defense that the minutes of the election meeting state that Petitioner and Petitioner's attorney "accepted the results and the Florida Statutes rule on two-thirds requirement." Even assuming the accuracy of such a statement, Petitioner is not precluded by such a statement from pursuing a legal challenge to the board's decision.

Finally, the Association asserts as a defense that Petitioner cannot serve on the board because Petitioner is the principal of Florida Homebuyers Insurance, Inc. (FHI) which owns three units in the Association, and FHI is delinquent in a monetary obligation to the Association in the form of rent because FHI held over and did not vacate timely the condominium Clubhouse that FHI was renting. Such an allegation is a counterclaim that would need to be brought by the Association in a separate new petition. *See* Fla. Admin. Code R. 61B-45.019(1).

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by email and by U.S. Mail, postage pre-paid, to the following persons on this 6th day of November, 2019:

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