

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

IN RE: PETITION FOR ARBITRATION

Kandy D. Fancher,

Petitioner,

v.

Case No. 2008-02-6951

Lighthouse Terrace, Inc.,

Respondent.

SUMMARY FINAL ORDER

On May 7, 2008, the petitioner filed a petition for arbitration alleging that the association had "failed to maintain the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners for a year after the date of the election," and attached to the petition copies of correspondence with the association. An order requiring the respondent to answer the petition was served on the association's registered agent on May 21, 2008. On June 9, 2008, the association filed its answer. Since there are no disputed relevant facts, a summary final order is appropriate pursuant to Rule 61B-45.030(3), Florida Administrative Code.

FACTS

1. On October 18, 2007, the petitioner requested, in writing, access to all records of the association, Lighthouse Terrace, Inc. On October 22, 2008, the association's property manager responded, in writing, stating that the records would be available for inspection on October 26, 2008, and could be copied for \$.50 a page.

2. On November 10, 2007, the petitioner sent a letter to the property management company stating that she inspected the records on October 26, 2007, but she was unable to find certain records that she wanted to review. The letter requested that she be allowed to review "all bids for 2007 as well as ballots for voting at the January 2007 annual meeting, including ballots for the various by-law changes that were proposed."

3. On December 3, 2007, petitioner sent a letter by certified mail again requesting "access to bids for 2007 and ballots from the annual meeting in January 2007." Petitioner noted that the association had ten days in which to provide the documents and that the association would be fined \$50 a day for each day thereafter up to ten days.

4. On December 12, 2008, the association, through its property manager, responded to the petition stating that the records had been reviewed and the ballots for the 2007 election could not be found.

5. On December 18, 2008, the petitioner wrote to the association via the registered agent and demanded payment of \$500.00 for the failure of the association to maintain the cooperative's records in accordance with §719.104(2)(a)10., Florida Statutes. The letter stated that if the petitioner was not provided with access to the ballots or a check for \$500.00 a petition for arbitration would be filed.

6. In its answer, the association does not dispute the above facts. However, the association explains that "prior to October 2007" the records of the association had been stored in "7 different apartments and storage closets around the complex." In October 2007, the same month petitioner asked for access to the records, Respondent

"collected all of these boxes and transported them to the new management company."

There were over forty boxes.

7. Because the boxes took up so much space, the property manager asked the association to "consolidate the records." The association "disposed of records that appeared superfluous." Respondent states that it assumed

since no person had requested the ballots of the 2007 Annual meeting, no person had contested the election of directors, no person had requested the sign-in sheets or any other related document from that meeting, **that no person in their right mind would object to the disposal of this materials [s/c] three months prior to its statutory disposal date.** Therefore, this material went into the disposal pile. [e.s.]

CONCLUSIONS

As a cooperative association, Lighthouse Terrace, Inc., is governed by the provisions of Chapter 718, Florida Statutes. The arbitrator has jurisdiction over this dispute pursuant to §719.1255, Florida Statutes, which requires arbitration in accordance with §718.1255, Florida Statutes.

It is difficult to comprehend the association's disregard of the statutory requirement that election records be retained for a year, and, even more so, its assertion that "no person in their right mind would object to the disposal" of a record "three months prior to its statutory disposal date."

Section 719.104(2)(a)10., Fla. Admin. Code, provides as follows:

(2) OFFICIAL RECORDS

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

.....
10. **Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1**

year after the date of the election, vote, or meeting to which the document relates. (e.s.)

The statutory provision is quite clear, and a shareholder should be confident that his or her association will comply with the law. The petitioner should not be ridiculed for expecting the association to maintain the records for the length of time required by statute.

Section 719.104(2)(c), Florida Statutes, provides as follows:

The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times. ... The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within ten working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this paragraph. The minimum damages shall be \$50 per calendar day up to 10 days, the calculation to begin on the 11th working day after receipt of the written request. (e.s.)

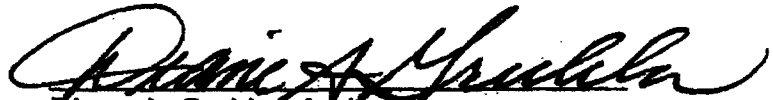
An association is expected to know and to comply with the requirements of the laws that regulate its operation. In this case, it is apparent that the association knew the law; it just chose to ignore it. When an association knowingly disposes of records that it is required by law to retain, it does so at its peril. The statute provides the penalty for willfully failing to provide access to the records required to be available. When an association knowingly destroys a record before the statutory time period has expired, the association has willfully failed to comply with Section 719.104, Florida Statutes, and the statutory penalty must be imposed.

Based on the foregoing, it is

ORDERED:

Lighthouse Terrace, Inc., shall pay to Kandy D. Fancher the sum of \$500.00 within 30 days.

DONE and ORDERED this 22nd day of July, 2008, at Tallahassee, Leon County, Florida.



Diane A. Grubbs, 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 summary final order may appeal by filing, within 30 days of the 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 cannot be appealed to a district court of appeal.**

ATTORNEY'S FEES AND COSTS

As provided by Section 718.1255, Florida Statutes, a prevailing party is entitled to have the other party pay its reasonable costs and attorney's fees. Rule 61B-45.048, F.A.C., requires that a party seeking an award of costs and attorney's fees must file a motion seeking the award not later than 45 days after rendition of this final order. The motion must be received by the Division within this 45-day period and must conform to the requirements of rule 61B-45.048, F.A.C. Filing of an appeal of this final order does not toll the time for the filing of a motion seeking prevailing party costs and attorney's fees.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing Summary.Final Order was sent by US Mail, postage prepaid, on this 22nd day of July, 2008, to the following:

**Kandy D. Fancher
2204 NE 36th Street
Unit 25
Lighthouse Point, FL 33604
Petitioner**

**Larry Schner, Esquire
750 South Dixie Highway
Boca Raton, FL 33432
Counsel for Respondent**