

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

IN RE: PETITION FOR ARBITRATION

STEPHEN SMITH,

Petitioner,

v.

WATER BRIDGE 2 ASSOCIATION, INC.,

Respondent.

Filed with
Arbitration Section

DEC -9 2010

Fee Case No. 2010-03-0207

Div. of FL Condos, Timeshares & MH Rel. Case No. 2009-03-4877
Dept. of Business & Professional Reg.

FINAL ORDER ON ATTORNEY'S FEES AND COSTS

This matter comes before the undersigned upon the petition for mandatory non-binding arbitration, pursuant to § 718.1255, Fla. Stat. On July 27, 2009, Petitioner filed an amended petition naming Water Bridge 2 Association, Inc. (the Association) as Respondent. The amended petition claimed that the Association improperly certified a recall against him, thereby causing his removal as a member of the board of directors. Petitioner's requested relief was to be placed back on the Association's board of directors. The Association is located in Broward County, Florida.

On July 31, 2009, the arbitrator entered an Order Requiring Answer to Petition for Arbitration. The order requiring answer and its enclosures were not successfully served on the Association by certified mail. Therefore, on August 18, 2009, the arbitrator entered an order directing Petitioner to serve the Association in accordance with the requirements of Rule 1.410, Fla. R. Civ. P., or Chapter 48, Florida Statutes. The Association was provided with service of process in this matter on January 4, 2010.

The return of service noted that the person served was Andre Echevarria, the

Association's vice president. At the time of service, Andre Echevarria was also the Association's registered agent listed with the Florida Department of State, Division of Corporations. The return of service states that, five minutes after serving Mr. Echevarria, the process server observed Mr. Echevarria throwing the documents with which he was served off of the third floor balcony.

The Association did not file a timely, responsive motion or an answer, and a default was entered against the Association on February 3, 2010. On February 25, 2010, the Association filed a motion to set aside the default. The motion claimed that there was an instance of mistake, inadvertence, surprise or excusable neglect that required the default to be vacated.

In order to resolve the issues raised by the Association's motion to set aside the default, the arbitrator conducted an evidentiary hearing on the motion on March 30, 2010. After hearing testimony from witnesses produced by both parties, the arbitrator found, in a Final Order on Default dated April 27, 2010, that the evidence showed that the petition was not inadvertently lost. Rather, the Association's vice president and registered agent, after having been served with the petition, flung it off of the third floor balcony. The arbitrator did not find this behavior to constitute excusable neglect, mistake, surprise, or inadvertence. Accordingly, the arbitration determined that the underlying case did not present the appropriate circumstances for relieving the Association of the consequences of its failure to timely defend itself. Thus, the Association's motion to set aside default was denied.

As a defaulting party, the Association admitted the well-pleaded facts and acquiesced in the relief sought in the amended petition. Therefore, the Association was

found to have improperly certified a recall against Petitioner, thereby causing his removal as a member of the board of directors as alleged in the petition. Petitioner was immediately seated on the board of directors of the Association to serve the remainder of his term.

On June 11, 2010, Petitioner, who is not an attorney and appeared *pro se* in the underlying case, filed a timely motion for fees and costs. Petitioner subsequently filed an amended motion for fees and costs. On July 22, 2010, the arbitrator entered an Order Permitting Response to the amended motion for fees and costs. On August 20, 2010, Respondent filed a response. This order is entered accordingly.

Prevailing Party

Pursuant to §718.1255(4)(k), Fla. Stat., 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. As Petitioner was afforded the relief he sought in the petition in the final order, Petitioner is the prevailing party in this case. Consequently, Petitioner will be awarded his reasonable costs pursuant to the statute and Fla. Admin. Code R. 61B-45.048. Petitioner is also requesting relief pursuant to §718.303(1), Fla. Stat., which states in pertinent part:

A unit owner prevailing in an action between the association and the unit owner under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation.

Petitioner is also determined to be the prevailing party for the purposes of awarding relief under §718.303(1), Fla. Stat. Prior arbitration case law has held that the

arbitrator has the broad authority under §718.1255, Fla. Stat. to award reimbursement to Petitioner for his *pro rata* share of all attorney's fees and costs incurred by the Association in connection with this action. *Clayton v. Atlantis Sherbrooke Villas East Condominium Association, Inc.*, Arb. Case No. 2007-01-8221, Final Order on Motion for Attorney's Fees and Costs, (June 17, 2006). The remaining issues to be decided by the arbitrator are the reasonableness of the costs claimed by Petitioner and Petitioner's *pro rata* share of all attorney's fees and costs incurred by the Association.

Costs

Petitioner seeks costs as follows: \$50.00 for the filing fee; \$15.00 for service of process fees; \$625.50 for 834 photocopies at 75 cents a page, \$250.00 for a video processing conversion fee creating a DVD containing a recording of the board meeting at which the Association certified a recall against Petitioner, \$17.50 for postage; \$51.13 for long distance call charges, \$14.31 for office supplies, \$184.00 for typist fees for 46 pages at \$4.00 per page, and \$104.25 for fax charges.

Petitioner is not an attorney and appeared *pro se* in the underlying case and in this case for fees and costs. When a party is not represented by an attorney, costs that may be awarded include certain items that normally may not be awarded as recoverable costs. *Ludwig v. Tudor Cay Condominium Association, Inc.*, Arb. Case No. 2004-02-0464, Final Order on Motion for Rehearing (September 8, 2005). As stated by the arbitrator in *Malone v. Pebble Springs Condominium Association, Inc.*, Arb. Case No. 00-1834, Final Order on Motion for Costs (March 13, 2001): "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”

The \$50.00 filing fee is appropriate, and it is awarded. As to the service of process cost, because Respondent was not successfully served by certified mail, Petitioner was ordered to personally serve Respondent. The arbitrator finds that \$15.00 is recoverable for service of process costs, and it is awarded.

As to photocopies, costs of copies of documents filed with the court, which are reasonably necessary to assist the court in reaching a conclusion, are awardable, and Petitioner has identified the photocopies as being filed with the Division. See *Statewide Uniform Guidelines for the Taxation of Costs in Civil Actions*. However, 50 cents per page is a reasonable charge. Thus, Petitioner is awarded for \$417.00 for 834 copies at 50 cents per page.

As to the \$250.00 video processing conversion fee for creation of a DVD containing a recording of the board meeting at which the Association certified a recall against Petitioner, this would have been important evidence if the underlying case was heard on the merits. Furthermore, Petitioner has provided a receipt for this cost. Therefore, the \$250.00 cost for DVD conversion is awarded.

The \$17.50 for postage, \$51.13 for long distance call charges, \$14.31 for office supplies, and \$104.25 for fax charges are all appropriate, and all are awarded. The \$184.00 for typist fees for 46 pages at \$4.00 per page fee is appropriate, and it is awarded. *Prawdzik v. Marine Colony Condominium Association, Inc.* Arb. Case No. 2003-07-7409, Final Order on Motion for Award of Fees and Costs (December 3,

2003)(Litigant proceeding *pro se* awarded typist fees for 65 pages of typed documents at \$4.00 per page). Accordingly, Petitioner is awarded the sum of \$1,103.19 for costs.

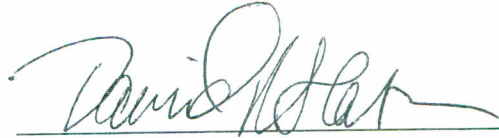
Pro Rata Attorney's Fees and Costs

As Petitioner has been determined to be the prevailing party for the purposes of awarding relief under §718.303(1), Fla. Stat., Petitioner is entitled to be reimbursed for his *pro rata* share of all attorney's fees and costs incurred by the Association in connection with this action. *Clayton, supra*. Petitioner's amended motion for fees and costs indicates that there are 48 units in the Association. Respondent does not dispute this. Accordingly, Petitioner is entitled to be reimbursed for 1/48th of all attorney's fees and costs incurred by the Association in connection with this action and the underlying case.

Therefore, based on the foregoing, it is **ORDERED**:

1. Respondent Water Bridge 2 Association, Inc. shall, within 30 days, pay to Petitioner \$1,103.19 for costs.
2. In addition to the \$1,103.19, Respondent Water Bridge 2 Association, Inc. shall, within 30 days, pay to Petitioner 1/48th of all attorney's fees and costs incurred by the Association in connection with this action and the underlying case.
3. Respondent Water Bridge 2 Association, Inc. shall not charge Petitioner directly or indirectly through condominium fees, assessments, or otherwise for any of the attorney's fees and costs incurred by the Association in connection with this action and the underlying case.
4. Any other motions in this case not yet ruled on are denied.

DONE AND ORDERED this 9th day of December, 2010, at Tallahassee, Leon County, Florida.



David R. Slaton, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Telephone (850) 414-6867
Facsimile (850) 487-0870

Trial de novo

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed in accordance with section 718.1255, Florida Statutes.

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 December, 2010:

Stephen Smith
5950 Del Lago Circle, #209
Sunrise, FL 33313
Petitioner

Claire Cubbin, Esquire
2101 N. Andrews Avenue
Suite Nos. 401-402
Fort Lauderdale, FL 33311-3940
Attorney for Respondent



David R. Slaton, Arbitrator