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

IN RE: PETITION FOR ARBITRATION

John Tanasychuk,

Petitioner,

v. Case No. 03-6175

625 Espanola Way, Inc.,

Respondent.
_____/

ORDER

Comes now, the undersigned arbitrator, and issues this order as follows:

The association has recently filed its answer, and the arbitrator has spent a considerable amount of time reviewing the file in this matter. The cause of action framed in the petition derived from the circuit court litigation appears to be based on estoppel, selective enforcement, fraud, and unclean hands. Many of these principles are affirmative defenses and they do not constitute a cause of action; this is the case for estoppel, unclean hands, and selective enforcement.

The essence of the dispute as stated in the petition is that the association has orchestrated an amendment to the bylaws which resulted in the petitioner losing one of two parking spaces that he had been using. The bylaw amendment was further amplified or clarified by the language of the bylaw amendment actually recorded or perhaps by rules and regulations promulgated by the board that make it even plainer that where an owner own more than one unit, he is only entitled to the assignment of one reserved parking space. The arbitrator finds that the notice of the November 22,

2002 membership meeting with its attached proposed bylaw amendment was adequate to inform the membership concerning the particulars of the contemplated amendment. The notice was adequate to inform the membership of the nature of the amendment. It is not disputed that the amendment was passed by more than ¾ of the quorum present at that meeting. It is not disputed that the board has rule making authority. It is not disputed that the board was under no legal obligation to adopt and propose as an amendment to the bylaws the final recommendation of the parking committee, and thus to argue that it was improper for the board to change the wording of the committee's recommendation, without more, does not demonstrate a basis in law. It is undisputed and admitted by each party that at the meeting, the president informed the membership that they should vote against the amendment if they were not in favor of taking away the space grandfathered to the petitioner, and that they should in favor of the amendment if they wished to overrule the objections of the petitioner. These instructions appear to be sound and not erroneous. The language of the amendment does not appear to be ambiguous to the arbitrator, but even it the language was unclear, the curative instruction of the president should have removed any potential ambiguity. Petitioner has not alleged nor attached affidavits from a majority of those voting at the meeting that they were mislead or defrauded in their understanding and the presentment of the amendment. Even without the clarifying explanation or later enacted clarifying rules, the language attached to and forming part of the notice of the meeting is capable of being understood in the manner in which the association ultimately intended the language.

In addition to the foregoing, the petitioner is charged at the point of purchase of the units with the knowledge the documents may be amended; there are few "vested

rights" in the condominium organization of ownership of real property. See, Woodside Village Condominium Association, Inc. v. Jahren, 806 So. 2d 452 (Fla. 2002). Petitioner has not shown that he was deprived of any vested property rights in the parking space. While before the 2002 amendments to s. 718.106, F.S. and s. 718.110(4), F.S., it was possible to have a vested right to a limited common element parking space (see Brown v. Rice, 716 So. 2d 807 (Fla. 5th DCA 1998), there is nothing in the condominium documents which give petitioner herein a property right in the 2 spaces originally assigned to his units.

Based on the foregoing, the petitioner shall show good cause why the petition should not be dismissed for failure to state a cause of action upon which the relief requested may be awarded. Along with the showing of good cause, the petitioner should attach affidavits from anyone who states that they were mislead by the sequence of events and would have voted differently if they had understood the true intent of the bylaw amendment. These items should be filed with the arbitrator within 14 days hereof.

DONE AND ORDERED this 25th day of March, 2003, at Tallahassee, Leon County, Florida.

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Karl M. Scheuerman, Arbitrator
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