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

IN RE: PETITION FOR ARBITRATION

Anthony Wine, as Trustee of the Amended Restated Declaration of Trust of Philanth Realty Trust dated 9-30-91, Tony Wine, a/k/a Ronald Ranta and Joan Harris, Individually,

Petitioners,

v. **Case No. 2003-09-6012**

Lighthouse Colony, Inc.,

Respondent.
_____/

SUMMARY FINAL ORDER

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

Petitioners filed their petition for arbitration on December 22, 2003. Petitioners are challenging the reasonableness of certain rules adopted by the Yacht Club through the authority of the cooperative association. One rule limits owners to one boat per slip, and another rule limits docks to one dock per association member. Petitioner Wine purchased two docks with the purchase of his unit, and has long kept more than one vessel in his largest slip. In February 2003, the Yacht Club created an operating procedure that limits dock ownership to one dock slip per member. Mr. Wine was actually grandfathered in and is permitted to use his two docks, but under the conditions of his grandfathering arrangement, once the ownership of his unit changes by sale or other transfer, the new owner cannot own two docks.[1] The association has informed Wine that when his unit is sold, only one dock may be transferred with the unit; the remaining

[1] But for this condition, the issue would not be an active dispute subject to adjudication.

dock must be sold to another person in the cooperative. With regard to the rule restricting owners to one boat per slip, Petitioner Wine has docked at least 4 boats and two jet skis at slip C1 since 1997. Slip C1 is approximately 57 feet long and 25 feet wide.

Petitioners also challenge the authority of the Yacht Club to adopt rules regulating the use of the common areas, noting that the cooperative statute provides that a cooperative shall be operated by an association (and not presumably by an unincorporated yacht club.) Certain of the other issues contained in the petition have been resolved. For example, the association has agreed not to charge petitioner Harris a $900 mandatory donation under a rule or bylaw providing that if one dock owner permits another owner to use his slip, there would be a mandatory dues "donation." The association had earlier attempted to retroactively impose this fee on Harris.[2] Other issues have also been settled by the parties in the course of this proceeding.

The association filed its revised answer to the petition on April 9, 2004, and the arbitrator endeavored to coordinate a status conference between the parties, which ultimately occurred on July 22, 2004. In the arbitrator's order following the status conference entered on July 23, 2004, the parties were given additional time in which to submit written arguments on those issues remaining in the case. The last argument was filed on August 30, 2004.

When the validity of a rule is examined, it must first be determined whether the board was acting within its authority when it created the rule, and secondly, it must be determined whether the rule "reflects reasoned or arbitrary and capricious decision making." Beachwood Villas Condominium v. Poor, 448 So. 2d 1143 (Fla. 4th DCA 1984)[3]. The rule of reasonableness

[2] While petitioners urge the arbitrator to examine the validity of this rule, there is no current dispute regarding this issue between the parties and the arbitrator declines to address this issue.

[3] Note that case law construing the condominium statute finds direct relevance to issues presented under the cooperative statute to the extent of similarities between the two statutes.

is designed to:

> …somewhat fetter the discretion of the board of directors. [T]he board is required to enact rules and make decisions that are reasonably related to the promotion of the health, happiness and peace of mind of the unit owners. In cases like the present one where the decision to allow a particular use is within the discretion of the board, the board must allow the use unless the use is demonstrably antagonistic to the legitimate objectives of the condominium association, i.e., the health, happiness and peace of mind of the individual unit owners. [Hidden Harbour Estates, Inc. v. Basso, 393 So. 2d 637, 640 (Fla. 4th DCA 1981)].

The first set of issues for examination involve the reasonableness of the rules limiting docks to a single vessel and limiting each owner to one dock. Petitioners challenge the rules as arbitrary and without reasonable basis. Specifically, with regard to the single-vessel-per-dock rule, petitioners argue that two smaller boats will necessarily have less impact, less total weight, use less electricity and water, and exert less pressure on the dock during a storm than a single larger boat. Petitioner Wine points out that he has parked multiple boats at his dock, without incident or complaint, for years. He argues that a larger boat would create more exhaust and consume many times the electricity of Wine's four smaller boats. A larger boat would also obstruct the view of the owners who currently can easily see around and over the 15 foot Boston Whaler that Wine docks. Petitioner also states that many larger boats contain smaller boats including life boats, and that in such a configuration, in reality two boats are nonetheless being permitted to occupy a single slip, in possible violation of the rule, while Wine would be subject to enforcement proceedings and fines for docking more than one vessel. Similarly, the rule permits larger boats to be accompanied by a smaller boat used to ferry passengers between the dock and the main boat. Petitioners also argue that the rule is contrary to established rights in that petitioners have been permitted to date to dock more than one vessel in the slip.

The association argues that the rule limiting one boat to a slip is rational and similar to a rule allowing only one car per parking space. The association states that the slips were designed to accommodate one vessel, and while it is possible to fit several smaller vessels within a single slip, that was not the designer's original intent. According to the association, because the slips were not designed to hold more than a single vessel, the configuration, structure, and spacing of the slips were not designed to accommodate multiple vessels. The association also notes the complexities and potential safety hazard[4] created where a vessel attempts to navigate and dock in proximity to other vessels, whether stationary or moored. The association also asserts aesthetic concerns; several boats occupying a single slip is aesthetically displeasing to the association.[5] The association also states that the rule simply clarifies existing association documents that provide that boat slips in Category A were intended for a boat that was under 20 feet in length; that slips in Category B were intended to accommodate a boat of up to 45 feet, and that Category C slips were able to hold a boat over 40 feet in length. In the past, the association has interpreted this language to mean that only one boat per slip is permitted.[6]

The arbitrator has reviewed the bylaws and articles of incorporation of the cooperative association as well as the Yacht Club documents. It appears that the cooperative association was incorporated in 1962, and the bylaws of the Yacht Club submitted with the petition were dated 1982. In the absence of the new rule, there is nothing in any of these documents that is

[4] The association cites additional safety concerns where a hurricane threatens the area. Presumably, additional vessels would create additional projectiles that would be available to cause damage to person and property. These "unforeseen safety problems" appear to be speculative at this juncture, and in any event, the rules of the Yacht Club provide that all boats will be evacuated from the docks in the event of a hurricane.

[5] The association again likens the wharf area to a parking lot and points out that it would appear unsightly to park several automobiles in individual parking spaces in a parking lot. One may be inclined to initially agree with this analysis, but a more realistic comparison would be parking several vehicles in a parking space 40 or 50 feet long, in which case the aesthetic concerns would appear neutral or nonexistent.

[6] Regardless of this putative historical construction, and despite its insistence that the documents always only permitted a single vessel per dock, the association has evidently failed to enforce the pre-existing language in a manner that restricted slips to a single vessel.

suggestive of a substantive limitation on the number of boats that could be docked in each slip. The bylaws of the Yacht Club provide for 3 classes of slips, A, B, and C, and provide that each respective slip is for boats under 20 feet, boats up to 45 feet, and boats over 40 feet, respectively. While in the ordinary course of events, it may be usual for a parcel owner to own only a single boat, and acknowledging that the chart is created in the typical one boat per owner scenario, the fact remains that there is nothing in the documents necessarily mandating the single boat per owner per slip rule either by direct pronouncement or indirect implication. Therefore, the arbitrator concludes that the one boat per slip rule is not required or inherent in the documents by implication. The arbitrator further concludes that petitioner Wine is not violating the original cooperative or Yacht Club documents by keeping several boats in his slip.[7]

Having decided that the rule is not required by the corporate documents, it must be examined whether the rule, however unsupported or not required by the documents, is independently rational or is instead arbitrary. First, it should be recalled that the rule actually permits multiple boats in its application, first, where a larger boat contains an on-board life boat, and secondly where the owner of a larger boat desires to use a smaller boat as a ferry between the larger boat and the land. The rules do not place a limitation on the length of these second boats, and for boats in excess of 50 feet, it would not appear to be uncommon to find a lifeboat rivaling the boat in regular use by other owners such as petitioner Wine.[8] Given these multiple boat scenarios that are tolerated under the rule, the rule in application introduces an element of arbitrariness where it acts to prohibit a different owner from keeping more than one boat in his

[7] The significance of this conclusion is found in Hidden Harbour Estates, Inc. v. Basso, 393 So. 2d 637, 640 (Fla. 4th DCA 1981) in which the court held that where a particular use is not prohibited by the documents but is within the discretion of the board, the board must allow that use unless the use is "demonstrably antagonistic to the legitimate objectives of the condominium association."

[8] See, for example, the advertising appearing at:
http://www.anchoryachts.com/listings.php?ID=95

slip, viz: one owner who uses a 50 foot dock might only have a 12 foot boat while his neighbor is able to park both his 40 foot motor yacht and the attached 12 foot lifeboat or ferryboat.

There is no direct evidence that the slips themselves were intended to accommodate larger boats *to the exclusion of smaller multiple boats*. To say that the slips were designed to be capable of holding a larger boat is not the same as saying that the docks may only accommodate larger boats. It would defy logic to argue that a slip capable of holding a 60-foot boat was structurally incapable of holding two or more smaller boats. It cannot be concluded that the mooring of smaller boats results in any greater burden on the structure of the dock than the mooring of a single large boat. Likewise, the suggestion that additional boats would create safety hazards and difficulties in navigation where one boat attempts to moor alongside another boat on the same pier, while having some logical appeal, cannot be accepted where the piers themselves, as in this case, are capable of comfortably holding a number of smaller boats without creating a risk of collision. Also, the arbitrator will not assume that petitioner Wine is propelling all 4 small boats and numerous jet skis about at one time thereby creating mass confusion in the marina area. While seeking to create a safe marina environment is a laudable association objective, adopting a rule limiting owners to one boat for each slip regardless of the size of the boats and the size of the slips is a blunderbuss approach that serves no one's legitimate interests. Finally, there is no showing that the use to which petitioners seek to put the slips--docking boats--is in any way demonstrably antagonistic to the interests of the condominium association. In fact, this *is* the intended use of the docking facilities, and to hold that an owner is restricted to use of a single 15-foot boat on a 50-foot dock is contrary to common sense and unduly restrictive of the right contained in section 719.105(2), Florida Statutes, to use the common elements in

accordance with the use intended.[9] Accordingly, based on these considerations, the arbitrator concludes that the one-boat-per-slip rule is unreasonable.

With regard to the one-dock-per-owner rule, petitioner Wine states that he was permitted to purchase two docks pursuant to rules then in effect which allowed an owner to purchase more than one space. Wine does not have the right under the new rule to sell or devise his docks and unit together; rather, he must sell one of the docks to an owner who has no dock. Wine claims that the rule amounts to a forced sale or taking of his property rights. The association, on the other hand, points out that the rule simply seeks to assure that dock spaces are available to as many residents as possible. The rule also discourages speculation in dock prices as where an owner may purchase several docks initially and then hold them until their market prices have increased substantially. The association suggests that petitioner Wine is engaged in such an endeavor, and further suggests that Wine may be planning to sell a dock to an outside member of the public. Petitioner Wine vigorously denies this assertion.[10]

It is, of course, an appropriate association function through its board to allocate common element facilities among the competing unit owners. Where, for example, a condominium (or cooperative) contains 25 covered parking spaces and 50 uncovered parking spaces, it is incumbent on the association or the documents to devise a system of allocation that is fair and nondiscriminatory. If the 25 spaces are limited common elements and not therefore subject to

[9] This is not to say that a different rule restricting owners to 2 or 3 boats depending on the size of the boats and the size of the particular slip would suffer the same infirmities as the instant rule which prohibits more than one boat regardless of the size of the boats or the length of the slip. At some point, a sense of rationality would emerge using this more specifically tailored approach.

[10] There is absolutely no evidence that Wine is engaging is speculative enterprises with reference to dock assignments. Neither do the documents support the association's claim that the dock spaces may be sold or otherwise transferred by Wine on the open market to nonmembers of the cooperative. Dock assignments may only be made to members of the cooperative association.

redistribution by the board,[11] then the board, if duly authorized, can engage in rulemaking and may consider, in allocating the use of the 50 uncovered general common element parking spaces, that those owners who have use of a limited common element space should not in the general course also be assigned one of the 50 uncovered spaces, where parking is a limited commodity within the condominium.[12] Here, it is similarly reasonable for the association, through the Yacht Club, to ensure that to the extent possible, each owner has the ability to obtain use of a boat slip, particularly where, as here, the documents do not guarantee that an owner is entitled to use more than one slip, where the number of slips is less than the number of parcels in the cooperative association, and where the documents contemplate that spaces can and will be assigned and re-assigned from time to time. While petitioners in their petition maintain that the dock spaces are in the nature of an appurtenance to their unit, there is no evidence that the dock spaces constitute an appurtenance within the meaning of section 719.105, Florida Statutes, and in any event, this is not borne out by the membership and dock certificate by which Wine came to exclusive possession of the docks. The certificate simply assigns the right to use docks C-1 and B-3 to Wine. The docks are not limited common areas but are simply common areas available for use as assigned by the association through the Club. The interest that Wine possesses in the slips appears akin to a leasehold interest. Therefore, the arbitrator concludes that while the association may not, in mid-lease, terminate Wine's use of the two docks[13], where the rules in effect permitted two spaces per parcel owner, the association through rule of the Yacht Club may

[11] There were certain amendments to ss. 718.106(2)(b) and 718.110(4), Florida Statutes, that attempt to accomplish a redistribution of limited common element use rights, but it does not appear that these amendments were duplicated in Chapter 719, and in any event there is some doubt that the amendments would find retroactive application and apply to condominiums created prior to the effective date of those statutory amendments.

[12] These are essentially the facts in Juno by the Sea North Condominium Association, Inc. v. Manfredonia, 397 So. 2d 297, 304 (Fla. 4th DCA 1981), opinion on rehearing, where the court upheld such an allocation plan as "eminently reasonable."

[13] See, Enegren v. Marathon Country Club Condominium West Association, Inc., 525 So. 2d 488 (Fla. 3rd DCA 1988).

separate one of the dock spaces from Wine's unit upon its transfer, as it has elected to do. The arbitrator affirms the validity of the one-dock-per-member rule which is reasonable and necessary in order to equitably distribute the use of available dock spaces among the members.

The association argues that the case of Woodside Village Condominium Association, Inc. v. Jaren, 806 So. 2d 452 (Fla. 2002) mandates this result, and argues further that a rule, in order to withstand judicial scrutiny, must simply be shown not to offend to a constitutional provision, be wholly arbitrary, or be contrary to public policy. Woodside certainly affirms the principle that purchasers take title subject to the ability of the association to amend its documents within the framework for amendments provided in the statute and documents, and to this extent the case is relevant to rebut Wine's argument that he has, in effect, a vested right to a continuation of the existing policies and rules in effect when he purchased his unit. The holding of Woodside does not, however, operate to validate every use restriction rule that happens by way of an amendment, nor does the opinion pre-empt or supersede prior case law providing that a rule must reflect a reasoned and purposeful objective. There is no language in the opinion suggesting that the tests first applied by the Hidden Harbour court no longer find application. In fact, the Supreme Court quoted with approval the Hidden Harbour court's two-stage test to determine the validity of provisions in the condominium documents. The Court only applied the first stage test because the amendment challenged in Woodside was an amendment to the declaration, applicable to the first prong of the test. The arbitrator rejects the association's suggestion that Woodside has the effect of absolving the association of its duty to enact only reasonable rules.

Petitioners argue next that the cooperative association cannot delegate its authority over the common areas to the Yacht Club and that such a delegation is ultra vires. The association states that the Yacht Club was created in 1969 for the purpose of managing the dock area

including the transfer of use rights, repairs, and maintenance. The Yacht Club is composed exclusively of those members of the cooperative association that are entitled to use a dock. The cooperative bylaws authorize the Yacht Club to manage the marina area. The association argues that the Yacht Club constitutes a "committee" within the definition provided by section 719.103(6), Florida Statutes, providing that a committee means a group of owners or board members appointed by the board to take action on behalf of the board.[14] Of course, it would be unusual for a committee to have the authority to have its own membership and to assess that membership directly for use fees, and any authority in this regard would be considered strictly derivative of the board's own authority.[15] The certificates by which an owner is assigned use of a particular slip state that the club is a duly authorized arm of the association. The bylaws of the cooperative association specifically empower the Yacht Club to manage the operation of the docks, to pay its own expenses incurred in the operation of the marina, and to pass bylaws that do not conflict with the bylaws of the cooperative association. The club provides notice under the statute to its members of meetings that are open to owners. It appears that the club operates subject to and in accordance with at least some of the requirements of Ch. 719, Florida Statutes.[16]

The issue of the status of the Yacht Club is truly a unique issue. The club may constitute a separate cooperative association as defined by section 719.103(2), Florida Statutes, or is

[14] The association has offered no minutes of any meeting of the board of the cooperative association where the Yacht Club was appointed as a committee, so the association might consider that the club constitutes a de facto committee, if this type of entity exists.

[15] See, the declaratory statement In re: Gudgel; Westwood Homeowners Association holding that an architectural control committee could be properly empowered by a condominium association to approve material changes to the common elements.

[16] The bylaws of the Yacht Club do, however, purport to authorize the board or the membership to cancel a lease of a dock and one's membership for any cause deemed sufficient. Compare, in this regard, the declaratory statement Betty Sulfridge, Case No. 91-1161 (July 22, 1992), holding that an association rule that purported to impose a forfeiture of the right to use assigned dock space for persistent noncompliance with marina rules was not a remedy authorized by Chapter 718, F.S.

possibly a committee of a cooperative association as defined by section 719.103(6), Florida Statutes. Under either scenario, the club is authorized to enact rules governing the use and maintenance of the common element marina facility. In Dept. Bus. Reg. v. Siegel and the Towers of Quayside Homeowners Association, 479 So. 2d 112 (Fla. 1985) and Raines v. Palm Beach Leisureville Community Association, Inc., 413 So. 2d 30 (Fla. 1982), the Florida Supreme Court examined the issue of whether certain entities constituted associations under Chapter 718, Florida Statutes. Noting that there was a possibility that the entities being examined in Towers of Quayside and Raines could at some point in the future include the owners of non-condominium dwelling units as members, the Court held that this potential for a mixed constituency left the associations outside the statute, and therefore concluded that the associations were not Ch. 718 associations. The Court in its analysis also examined the source of authority of the associations to determine whether the authority of the associations was derived from a declaration of condominium, or instead was derived from some other instrument such as a declaration of covenants and restrictions or articles of incorporation. Here, membership in the Yacht Club can only be composed of cooperative association members, so the constituency test is apparently[17] satisfied. Likewise, the authority of the club has its basis in the cooperative documents creating the cooperative association pursuant to Ch. 719, Florida Statutes. It is possible that the club constitutes a separate association falling within Ch. 719, Florida Statutes[18], in which case its activities must be governed by the controlling statute in all respects. Compare,

[17] But consider that membership in the Yacht Club is not a required condition for ownership of a cooperative parcel in the cooperative association. Due to historical accident and not by design, Chapter 719, Florida Statutes, was never amended in the manner of Ch. 718, Florida Statutes, to embrace the holding of Downey v. Jungle Den Villas Recreation Association, Inc, 525 So. 2d 438 (Fla. 5th DCA 1988), pet. for rev. den. 536 So. 2d 244 (Fla. 1988). Compare, section 718.103(2), Florida Statutes, with section 719.103(2), Florida Statutes; the former definition contains a condition of mandatory membership while the latter does not.

[18] Since an association is defined by the statute as *the entity responsible for the operation of the cooperative* that owns the record interest in the cooperative property, if the club does not outright own or lease the marina property, and if the club is not operating the cooperative, it would not appear to constitute an association under the statute.

in this regard, the following declaratory statements: El Conquistador Villas, Village 2 Condominium Association, Inc., Case No. 86A-175 (May 10, 1988)(a recreation association created to operate a parcel of land containing recreational facilities for the benefit of condominium unit owners was not an "association" where the land and facilities operated had not been created as common elements but were leased from the developer, with the Division finding that the rec association was not responsible for the operation of a condominium); Vanderbilt Surf Colony, Case Nos. 85-A-346; 85A-347 (May 24, 1988)(recreational pool association created to operate and hold real property for the use and benefit of condominium unit owners was held not to constitute a statutory association because, among other reasons, it did not operate land subject to the condominium form of ownership); Forum Six Association, Case No. 82A-191 (August 4, 1982)(arrangement whereby a recreational association operated limited common property for the use of owners in a number of separate condominiums did not violate Chapter 711, Florida Statutes, as the statute permitted the declaration to contain matters not inconsistent with the statute); Wynmoor Community Council, Inc., Case No. DS 94-0029 (August 2, 1994) (holding that the community council created to operate property owned by the council and used in common by the owners in forty-four separate condominiums was an association under the expanded condominium statute definition, where the owners were beneficial members in the council: "As the council is a condominium association, it follows a fortiorai that the council is subject to the operational requirements of Chapter 718, Florida Statutes.") But see, Hirshorn, Kings Point Community Association (October 1981) (master association created by various amendments to the declaration of condominium derives its authority from Chapter 718 and must act consistently with the statute: "It would be an improper delegation of authority to allow the master association to act independently of the area

associations"); Vanderlaan, Timbercreek at Lely Condominium I Association, Inc., Case No. 84A-378 (January 14, 1985), holding that where the declaration provided that a separate homeowners' association was to administer condominium property used in common for recreational purposes by condominium unit owners and homeowners, the arrangement was repugnant to Ch. 718:

> Basic to the condominium form of ownership of real property is that condominium property shall be operated pursuant to the Condominium Act, with its attendant rights, duties and obligations distributed among various participants in the scheme, including condominium associations, developers, and unit owners. Pursuant to Section 718.111(1), Florida Statutes, the operation of a condominium shall be by a condominium association. An arrangement whereby condominium property is administered by an entity other than a condominium association, is facially repugnant to the Condominium Act. To sanction an arrangement whereby property which is exclusive condominium property is governed by an entity other an a condominium association and governed by non-condominium law, would effectively abrogate the specific rights of condominium unit owners….

The precise status of the Yacht Club need not be decided here. Petitioners have failed to demonstrate that the existence or authority of the Yacht Club is contrary to any particular provision in Chapter 719, Florida Statutes.[19] It is plain that the club has authority over cooperative property that it operates for the use and benefit of those members of the cooperative association who have the benefit of a dock certificate. As such, consistent with the authorities cited above, the affairs and operations of the club must conform in all respects to the requirements of Chapter 719, Florida Statutes, and the rules promulgated thereunder. In this manner, the owners are provided the rights conferred by the legislature when it passed the

[19] The cooperative statute, unlike the condominium statute, does not provide that all cooperatives existing in the State at the time the statute was first enacted are subject to the statute. Compare, sections 718.102 and 719.102, Florida Statutes. It appears that the subject cooperative may have been created prior to the first cooperative statute, but there is not enough information in the record to confirm this.

cooperative statute. The club is authorized by the cooperative documents to adopt reasonable rules and regulations affecting the use of the marina, and it can only be concluded that in exercising this authority, the club was acting within its powers. Therefore, petitioners' challenge to the authority of the Yacht Club is dismissed.

WHEREFORE, based on the foregoing, it is ruled that the rule limiting the docks to one boat is invalid; the rule limiting owners to one dock is declared valid as applied to petitioner Wine, and the challenge to the authority of the Yacht Club to make rules is dismissed.

DONE AND ORDERED this 8th day of November, 2004, at Tallahassee, Leon County, Florida.

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Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

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 8th day of November, 2004:

Leonard Wilder, Esquire
Thomas J. Tighe, Esquire
Tucker & Tighe, P.A.
800 East Broward Blvd., Ste. 710
Ft. Lauderdale, Florida 33301

Frank V. Reilly, Esquire
600 Corporate Dr., Ste. 510
Ft. Lauderdale, Florida 33334

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Karl M. Scheuerman, Arbitrator

Right to Appeal

As provided by s. 718.1255, F.S., this final order may be appealed by filing a complaint for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30 days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal. If this final order is not timely appealed, it will become binding on the parties and may be enforced in the courts.

Attorney's Fees

As provided by s. 718.1255, F.S., the prevailing party in this proceeding 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 actually received by the Division within this 45 day period and must conform to the requirements of rule 61B-45.048, F.A.C. The filing of an appeal of this order does not toll the time for the filing of a motion seeking prevailing party costs and attorney's fees.