

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

IN RE: PETITION FOR ARBITRATION

JEFFERY GIORDANO/SHERLOCK HOMES  
INVESTMENTS, LLC,

Petitioners,

v.

Case No. 2023-06-8497

THE AMETHYST CONDOMINIUM  
ASSOCIATION, INC.,

Respondent.

Filed with  
Arbitration Section

FEE - \$ 6.0000

Div. of FL Condos, Timeshares & Mobile Homes  
Dept. of Business & Professional Reg.

ORDER DENYING MOTION TO DISMISS and  
REQUIRING RESPONDENT TO FILE AN ANSWER

On December 4, 2023, Petitioner filed a petition for arbitration that named the Amethyst Condominium Association as the respondent. (Association) The dispute alleged in the petition is that the Association failed to provide the Petitioner with the opportunity to inspect the Association's official records within ten days of receiving Petitioner's request. (Inspection Request) On January 3, 2024, the Association filed a Motion to Dismiss. (Motion) On January 5, 2024, Petitioner was ordered to file a response (Response) to the Motion and re-file various exhibits to the petition. Petitioner timely made the required filings.<sup>1</sup>

The Association advances several reasons for granting its Motion. The first basis

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<sup>1</sup> The Response cites numerous trial court orders. The arbitration section is generally guided by its own body of case law (see examples in this order) and opinions of Florida District Courts of Appeal and the Florida supreme court.

is that the pre-arbitration notice provided by the Petitioner<sup>2</sup> fails to meet the requirements of section 718.1255(4)(b), Florida Statutes, because it fails to provide the Association with a reasonable time in which to provide the relief requested. Specifically, the Motion cites an August 1, 2023, letter from Petitioner to the Association (Petition Exhibit “I” hereafter “Correspondence”) for the proposition that “[o]n page four of the correspondence, under a heading entitled ‘Demand for relief requested,’ Mr. Giordano lists ‘[a]n immediate release of records requested’” as his first demand. [Emphasis in original.] Motion at 2.

The second reason stated in the Motion for dismissing the petition is that “... none of Mr. Giordano’s five additional demands in the Correspondence provide any date for compliance.” Motion at 3.

The third reason for dismissal is that “most of Mr. Giordano’s demands in the Correspondence are also outside the jurisdiction of the Department of Business and Professional Regulation (“DPBR”) pursuant to the definition of ‘disputes’ as set forth in 718.1255(1) and seek actions which would first require the Association to notice and hold meetings.” Motion at 3-4.

Finally, the Association argues that “the Correspondence is dated more than five months ago and may therefore be stale.” *Id.* at 4.

[remainder of page intentionally left blank.]

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<sup>2</sup> In his Response, Petitioner identifies Exhibits “H” and “I” as his pre-arbitration notices. See, Response at 4. “Petitioners sent a formal notice of intention to file an arbitration request in August 2023, See. Pet Exhibit H and I. Petition Exhibit “H” is series of email exchanges between Petitioner and the Association and its management company. These exchanges cover a period of 7/21/2023 to 8/4/2023. Petition Exhibit “I” is a letter (certified mail), dated August 1, 2023, from Petitioner to the Association.

## Findings of Fact

1. Exhibit G:

a. June 26, 2023: By certified mail Petitioner sent the Association an official records request. The preface to this letter reads as follows:

Florida law provides: "The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of written request by the board or its designee." Further, "The failure of an association to provide the records within 10 working days after receipt of a written request shall create a rebuttal presumption that the association willfully failed to comply." SEE §718.111(12), Florida Statutes.

b. The Association received Petitioner's records request on June 29, 2023.

2. Exhibit H:

a. July 21, 2023: The Association acknowledges receipt of Petitioner's Inspection Request; provides a link to documents; and states it is "diligently working to address the pending items. They are currently in the final stages of completion and are expected to be finalized by Monday, July 24, 2023."

b. July 22, 2023: Petitioner informs Association receiving some documents, of documents still missing and of providing documents that are non-responsive to his Inspection Request.

c. July 24, 2023: Petitioner provides detailed description of documents that were not produced, produced in part or that were (allegedly) produced in an altered state.

d. July 24, 2023: Association responds to Petitioner's email of same date and states: it is "still working on your [Petitioner's] request. Unfortunately, we are not able to finalize today but we hope that within the next couple of days we should have the items that are missing."

3. Exhibit I:

a. States in several places the nature of the dispute: violation of section 718.111, Florida Statutes and Petitioner's right to inspect records.

b. References Petitioner's June 26, 2023, Inspection Request and includes USPS tracking numbers.

c. States that "I'm advising the Amethyst condominium Association, its board of directors, and our association lawyer, Mr. Ronnie Bronstein, in accordance with section 720.311 [sic] that this is an official notice that This [sic] is advanced notice that I will be applying for arbitration before taking any civil legal action against the Association, Miami management. Its association attorney in the absence of resolution of the dispute."

d. States with specificity the documents that have not been provided or only partially provided per Petitioner's Inspection Request.

e. Demanded the following relief:

i. The immediate release of records requested.

ii. a total of \$4,000 in damages per 718.111, Florida Statutes for

"8 requests being withheld."<sup>3</sup>

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<sup>3</sup> The arbitrator understands this demand to be for 8 items in Petitioner's June 26, 2023, records request that were not provided. As such, Petitioner misunderstands that section 718.111, Florida Statutes, does not provide a penalty of up to \$500.00 for each item in a request that is not provided but up to \$500.00 for each separate request that is not honored irrespective of the number of items in a given request.

iii. all attorney's fees and arbitration fees related to the denial of my request.

iv. Sanctions against Miami management, Elizabeth Alvarez, Elaine Vargas regarding their potential involvement and participation in potential RICO violations in conspiring with board members and the association attorney as the documents being withheld are denying me furnishing supporting documents to various governmental agencies on potential criminal and ethical violations.

v. An immediate refund to myself and other unit owners of the special assessment \$8,583.33 as these funds were never used for the listed purpose.

vi. Immediately provide proper documentation to the state of Florida Division of corporations listing Onix Padron as President, Ron Speelman Vice President, Noelia Grossi as treasure for their tenure as the Board of Directors

#### Conclusions of Law

Section 718.111(12)(b) and (c), Florida Statutes, provides, in part:

(b) ... The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee.

(c)1. ... The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph.

Section 718.1255(4)(b), Florida Statutes, provides:

b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;
2. A demand for relief, and a reasonable opportunity to comply or to provide relief, and;
3. Notice of the intent to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition.

The Association's motion argues that division precedent holds that the use of the word "immediate" in the pre-arbitration notice renders the notice null and void. The Association cites several cases in support of this argument. The Association's reliance on these cases is misplaced. In *Turnberry Village South Tower Condominium Association, Inc., v. Guitierrez*, Arb. Case No. 2023-04-3314, Final Order of Dismissal for Lack of Proper Pre-arbitration Notice (August 10, 2023) the undersigned did in fact dismiss the case because the Association's pre-arbitration notice required the Respondent to "immediately remove the lock" from his door.<sup>4</sup> In *Andros Village Condominium Association v. Ritter*, Arb. Case No. 2020-01-0485, Final Order of Dismissal (March 2, 2020) the arbitrator dismissed the case because the Association's pre-arbitration notice required the Respondent to "immediately cease and desist from feeding any feral cats...."

The above cited cases are distinguishable from the present case in two important

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<sup>4</sup> Although *Turnberry* does not explain the arbitrator's ruling on the issue of "immediate removal of the lock," if the respondent had immediately removed the lock from this door, and did not have the original lock, the unit would have been accessible to anyone. Such a situation could have created a security risk to the unit's inhabitants. Accordingly, respondent needed time to either have the old lock re-installed (assuming it was still available) or, as was the case, have a key to the new lock made for the Association.

respects. The first is that the disputes in the above cited cases do not involve section 718.111(12), Florida Statutes, which specifically imposes an absolute duty and specific time period (deadline) for the Association to produce for inspection records responsive to a unit owners records inspection request. The cases cited by the Association, as well as a litany of other arbitration cases calling for immediate action by a party, are not subject to the time deadline imposed by section 718.111(12)(b) and (c), Florida Statutes. Accordingly, these cases are distinguishable from the present dispute.

Secondly, the facts of this case bear heavily in favor of the Petitioner. Pursuant to the statute, the Association had until July 13, 2023, to make the records available for inspection by Petitioner. The Association did not provide any documents to Petitioner until July 21, 2023, eight days past the statutory deadline and even then, did not provide all of the requested documents. Petitioner immediately notified the Association of the deficient production to which the Association responded the remaining documents should be assembled and ready for Petitioner “within the next couple of days.” There was no agreement to extend either the statutory deadline or an agreement to an inspection date “proposed” by the Association. In similar fashion, the Association did not claim that the records sought by Petitioner were exempt from production.<sup>5</sup> Nor has the Association asserted any facts that constitute a legally cognizable defense as to why it was impossible to provide access to the records within the statutory timeframe. The communications alleged in the petition, in combination, allege an intention to pursue an action if there is no resolution.

A unit owner’s right to the official records of the association is absolute. The

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<sup>5</sup> See, section 719.111(12)(c)3.a.-h., Florida Statutes.

Legislature has determined that an association must provide a unit owner the opportunity to inspect its official records within 10 days of receipt of said request. The 10-day time deadline is self-executing. The statute is subject to strict construction. *See, Frederico et al. v. Manner Pointe Condo. Association, Inc.*, Arb. Case No. 2011-04-1330, Final Order of Dismissal (August 23, 2011) (Statute is strictly construed because it provides for a monetary penalty.)<sup>6</sup> The provision in the statute does not separate failure to maintain and the failure to provide access. *See, Herrera v. The Arbors Condominium Association, Inc.*, Arb. Case Nos. 2016-02-8148, 2016-03-1970 and 16-03-4039, Order Consolidating Cases and Summary Final Order (September 23, 2016). In fact, failure to maintain a record deprives the unit owners of access to that record. *Id.*<sup>7</sup> Failure to hold a meeting required by the association's bylaws that results in there being no meeting minutes violates section 718.1255(4)(b), Florida Statutes. *See, Verdries v. Westbury J Condominium Association, Inc.*, Arb. Case No. 2023-01-8726, Summary Final Order (November 17, 2023). An owner's motive in requesting records is not relevant under the

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<sup>6</sup> See also, section 718.111(12)(c)2., Florida Statutes, which provides:  
Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

<sup>7</sup> Recedes from the decisions in *Brown v. Wellington L Condo. Association, Inc.*, Arb. Case No. 94-0363, Final Order (Feb. 20, 1995) (*Brown* held that where an association fails to maintain certain records, the precise violation of the statute involved is a failure to maintain the specific record.) and *Agan v. Plaza East Association, Inc.*, Arb. Case No. 2003-09-2374, Summary Final Order (Jan. 20, 2004) (*Agan* held that when the Association becomes "aware" of its failure to maintain a required record and continues to fail over a period of time to acquire and maintain the record, an inference may arise that the association is willfully failing to allow access to the records.)



statute and the fact that the owner has on previous occasions inspected the record he now wants to examine does not bar his right to obtain access to the records. See, *Twin Fountain Club Owners Ad-Hoc Committee v. Twin Fountains Club, Inc.*, Arb. Case 2001-3329, Order Abating Case (September 17, 2001) An association may not shield itself from liability for failure to comply with the statute by laying the blame for non-compliance at the feet of its management company. See, *Rennert v. Cedar Landing at Jacaranda Condominium Association, Inc.*, Arb. Case No. 2022-04-9109, Summary Final Order (December 27, 2022) (Association is liable for acts of its management company under doctrine of respondent superior.) An association may not adopt rules that limit the number of inspections per month or limits the time (hours) per month a unit owner has to inspect records.) See, *Napiwocki v. One Thousand Oaks, Inc.*, Arb. Case No. 2020-03-5230, Final Summary Order (September 28, 2020) (Association rule limiting owner to inspection of records once a month for no longer than eight hours ruled unreasonable.) An association must provide a unit owner a *reasonable* opportunity to inspect records. See, *Breitkrutz v. Bosca View Condominium Association*, Arb. Case No. 2016-05-5588, Summary Final Order (April 18, 2017) (Association did not give owner reasonable opportunity to inspect records when it sent owner email that gave owner less than 24 hours' notice to inspect records.) An owner is not required to detail each record to be inspected but may properly request to view all official records. See, *Di Renzo v. Concord Village Condo. Association, Inc.*, Arb. Case No. 96-0387, Final Order (February 24, 1998). A unit owner is not required to barter with an association as to when it will produce records for inspection or whether all records requested will be produced for inspection. See, *Chiu v. Anastasia Island Townhomes*, Arb. Case No. 2022-05-7776, Summary Final Order

(June 27, 2023) (Petitioner requested access to “all association” records. Association failed to produce all records despite repeated requests by owner to do so. Association violated section 718.1255(4)(b), Florida Statutes.)

The Association’s remaining reasons for dismissal of the petition are rejected.<sup>8</sup>

Accordingly, it is

ORDERED:

Respondent’s Motion Dismiss is DENIED. Respondent shall, by 5:00 p.m. February 16, 2024, file an answer in conformance with the Order Requiring Answer issued on December 8, 2023, and rule 61B-45.019, Florida Administrative Code.

DONE AND ORDERED on February 6, 2024, in Tallahassee, Leon County, Florida.

J. A. Spejenkowski  
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<sup>8</sup> The relief requested in the petition abandons those forms of relief demanded in the Inspection Request that are not germane to said request. The relief requested in the petition mirrors the relief demanded in the Inspection Request. Accordingly, the arbitrator finds that the relief sought in the pre-arbitration notice and the petition are not so substantially different that dismissal of the petition is required on these grounds. See, e.g., *Ventura at Stonebridge Commons, Condominium Association., Inc. v. M2G4 Investments LLC.*, Arb. Case No. 2023-01-8323, Final Order of Dismissal Without Prejudice (April 3, 2023)

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