

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

IN RE: PETITION FOR RECALL ARBITRATION

**Filed with
Arbitration Section**

**JAMES SPINELLI, in his capacity as Unit
Owner Representative,**

APR 11 2018

Petitioner,

**Div. of FL Condos, Timeshares & MH
Dept. of Business & Professional Reg**

v.

Case No. 2018-01-0735

ELDORADO PLAZA WEST ASSOCIATION, INC.,

Respondent.

FINAL ORDER OF DISMISSAL

On February 28, 2018, Petitioner filed a petition for mandatory non-binding arbitration pursuant to ss. 718.112(2)(j)4. and 718.1255, Florida Statutes, naming Eldorado Plaza West Association, Inc. as Respondent. Pursuant to s. 718.112(2)(j)4., Florida Statutes, “if the board fails to duly notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board’s failure to act.” (Emphasis added.) Section 718.1255(4)(b), Florida Statutes, requires:

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 the relief; and
3. Notice of the intention 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 without prejudice.

Petitioner failed to include with its petition proof of Petitioner's compliance with the prerequisites of s. 718.1255(4)(b), Florida Statutes. Consequently, on March 7, 2018, the undersigned issued an Order requiring Petitioner to file with the undersigned proof that Petitioner gave to Respondent pre-arbitration notice that meets the requirements of s. 718.1255(4)(b), Florida Statutes. On March 14, 2018, Petitioner filed a response to the Order Requiring Filing, and on March 16, 2018, Petitioner filed a supplement to that response. Both responses are discussed below.

Petitioner's March 14 Response

In its March 14, 2018, response, Petitioner argued that pre-arbitration notice in a recall dispute would serve no useful purpose and would cause a delay in determining the propriety of the board's actions. In support of its position, Petitioner cited to *Sciarati v. The Villages at Emerald Lakes One Condominium Association*, Arb. Case No. 2005-02-1485. In *Sciarati*, the arbitrator held that pre-arbitration notice was unnecessary when a petition for arbitration challenged the board's certification of a recall. However, subsequent arbitration decisions receded from the holding in *Sciarati*, requiring petitioners to provide pre-arbitration notice to the board of their association prior to instituting a petition for recall arbitration. See *Howard v. Coco Wood Condo. Ass'n, Inc.*, Arb. Case No. 2009-02-4148, Final Order Dismissing Petition (June 10, 2009) ("In the instant case, had petitioner provided proper pre-arbitration notice to the association's board of directors, it may have resulted in the board's reversal of its decision..., which is the purpose of pre-arbitration notice in the first place."). See also *Prycodzien v. Northwest Lakes Condo. Ass'n, Inc.*, Arb. Case No. 2013-02-5216, Order Requiring Filing (June 25, 2013) ("Pre-arbitration notice could actually result in a decision by a board to change its position when the board realizes that attorney's fees are at stake.").

Petitioner also argued that, even if pre-arbitration notice is required before the initiation of certain recall disputes, such notice was not required in the instant matter as, pursuant to s. 718.112(2)(j)3., Florida Statutes, the recall was deemed effective when Respondent failed to notice and hold the required meeting. In other words, Petitioner argues that there is no basis to require service of pre-arbitration notice upon a board that is no longer the board by operation of law. This argument is without merit. Whether or not Petitioner's recall attempt became effective by operation of law¹, the decision of Respondent's board to permit the board members subject to the recall to continue to serve on the board necessitated the instant petition. The logic of the decisions in *Howard* and *Prycodzien* applies; pre-arbitration notice might have resulted in the board changing its position, thereby obviating the necessity of this arbitration proceeding.

Petitioner's March 16 Supplemental Response

In its March 16, 2018, supplemental response, Petitioner argued that pre-arbitration notice was not required in the instant matter because it would have been impossible for Petitioner to both meet the pre-arbitration notice requirements of s. 718.1255(4)(b), Florida Statutes, and to file the petition for arbitration more than 60 days before the next scheduled election of the board as required by s. 718.112(2)(j)7., Florida Statutes. This argument is also without merit.

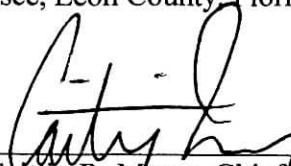
Petitioner's decision to attempt a recall so close in time to the next scheduled election of the board does not eliminate Petitioner's obligation to provide pre-arbitration notice pursuant to s. 718.1255(4)(b), Florida Statutes.

It is, therefore, ORDERED:

The petition is DISMISSED and case number 2018-01-0735 is CLOSED.

¹ The undersigned makes no finding as to the validity of Petitioner's recall attempt or as to whether the recall came into effect by operation of law pursuant to s. 718.112(2)(j)3., Florida Statutes.

DONE this 11th day of April, 2018, at Tallahassee, Leon County, Florida.

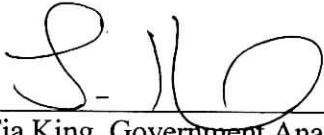


Caitlin R. Mawn, Chief Arbitrator
Dept. of Business and Professional Regulation
Division of Florida Condominiums,
Timeshares and Mobile Homes
Arbitration Section
2601 Blair Stone Road
Tallahassee, FL 32399-1030
Telephone: 850.414.6867
Facsimile: 850.487.0870

Certificate of Service

I hereby certify that, on this 11th day of April, 2018, a true and correct copy of the foregoing Final Order of Dismissal was sent by U.S. Mail to Petitioner and/or Petitioner's representative at the following address:

Eric Glazier
Glazer & Sachs, P.A.
3113 Stirling Road, Second Floor
Fort Lauderdale, FL 33312



Tia King, Government Analyst II