

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

IN RE: PETITION FOR ARBITRATION

TIMBERWOODS CONDOMINIUM
ASSOCIATION, INC.,

Petitioner,

v.

Case No. 93-0328

SCOTT and ILEEN PARKER,

Respondents.

SUMMARY FINAL ORDER

This cause came before the Arbitrator pursuant to Rule 61B-45.030, Florida Administrative Code, which provides for simplified arbitration procedures when the dispute between the parties does not involve disputed issues of material fact.

APPEARANCES

For Petitioner:

Laura J. Rayburn, Esq.
Joel S. Teuhaft, Esq.
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For Respondents:

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STATEMENT OF THE ISSUE

Whether the size restrictions for dogs contained in the Rules and Regulations are enforceable against the Respondent/unit owners, in light of the provisions of the declaration of condominium, in particular Article 8.6(d).

PROCEDURAL STATEMENT

Timberwoods Condominium Association, Inc. filed a Petition for Arbitration with the Division on September 23, 1993. On November 9, 1993, Respondents Scott and Ileen Parker filed their Answer. On December 1, 1993 the Arbitrator ordered that the question set out above be briefed by the parties and decided by the Arbitrator in summary fashion with a formal fact finding hearing to follow only as necessary. Both parties filed memoranda of law by December 28, 1993.

FINDINGS OF FACT

1. Petitioner, Timberwoods Condominium Association, Inc., (Association), is the condominium association responsible for the operation and management of Timberwoods Condominium.

2. Scott and Ileen Parker are the owners of unit 9711 at Timberwoods Condominium. Petitioner alleges that the Parker's dog exceeds the size limitation contained in the condominium regulations.

3. The Declaration of Condominium provides as follows:

Pets may be kept on the premises provided they are kept on a leash while outside of their owner's Unit. If, however, in the opinion of a majority of the Board of Administrators, a particular pet constitutes a nuisance, then the owner when so notified in writing, shall be required to immediately remove said pet from the premises. [Article 8.6(d)]

(Members shall) Conform to and abide by the bylaws and uniform house rules and regulations in regard to the use of the unit and common elements which may be adopted in writing from time to time by the Board of Administrators of the association, and to see that all persons by, through, or under him do likewise. [Article 8.6(g)]

Regulations. Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Association, in the manner provided in its Articles of Incorporation and By-laws. Copies of such regulations and amendments shall be furnished by the Association to all Unit owners and residents of the Condominium upon request. [Article 10.8]

4. The rule being asserted by the Association against the Respondents provides as follows¹:

Unit Owners are allowed one (1) small pet (either a dog or a cat). Adult height of dog not to exceed 18 inches to shoulder. Existing pets excluded. Said pet shall be kept quiet at all times. Pets are to be carried or kept on a leash at all times when outside of the unit. Owners of pets are required to clean up after their pets. Any damage caused to the property or the condominium common areas shall be paid for by the pet's owner. Any pet constituting a nuisance shall be removed from the premises by the owner of said pet within ten (10) days of said notification. [Article VI.A, Rules and Regulations, Timberwoods Condominium Association, Inc.]

CONCLUSIONS OF LAW

The Arbitrator has jurisdiction over this matter pursuant to §718.1255, Florida Statutes. The Respondents are unit owners within the meaning of §718.103(25), Florida Statutes. Petitioner is an association within the meaning of §718.103(2), Florida Statutes.

This case is easily resolved using the principles laid out in Beachwood Villas Condominium v. Poor, 448 So.2d 1143 (Fla. 4th DCA 1984). In Beachwood, the court said that when a court is

¹There is evidently some dispute regarding whether the rule was properly noticed or if the 51% unit owner approval requirement had been met. However, for the purposes of this simplified proceeding, it is assumed that the rule was properly adopted.

called upon to assess the validity of a rule enacted by a board of directors, "it first determines whether the board acted within its scope of authority and, second, whether the rule reflects reasoned or arbitrary and capricious decision making." Id. at 1144. If one prong of this test is not met, there is no need, of course, to proceed to the other.

In determining whether the board has exceeded its authority the Beachwood court directs us to look to the governing documents and the applicable statutes to determine whether the board does, in fact, have the authority to adopt rules and regulations for governance of the condominium, and finally whether the topic of a rule is a legitimate subject for board rulemaking. Mohnani v. La Cancha Condominium Association, Inc., 590 So.2d 36 (Fla. 4th DCA 1991). "(P)rovided that a board-enacted rule does not contravene either an express provision of the declaration or a right reasonably inferable therefrom, it will be found valid, within the scope of the board's authority." Beachwood at 1145. Stated another way, "Clearly, a condominium board may not adopt rules modifying the provisions of a declaration without proper amendment." Gordon v. Palm Aire Country Club Condo. Ass'n., 497 So.2d 1284, 1285 (Fla. 4th DCA 1986).

In this case, the board is clearly empowered to make rules regarding the use of the condominium property, including the units. However, the board has exceeded the scope of its authority in adopting a rule restricting the type of pet and, if it is a dog, the size of the dog which a unit owner may have

where the declaration allows "pets" without regard to type or size.² The right to have a dog of any size is a right that is inferable from the provision in the declaration which states "Pets may be kept on the premises provided they are kept on a leash while outside of their owner's Unit." In fact, a third of the breeds of dogs which a unit owner may wish to have as a pet will exceed the 18-inch size limitation contained in the board's rule. If the declaration were silent as to pets altogether, such a rule would probably be within the board's authority. See, The Lakes of Inverrary Condominiums, Inc. v. Miriam Golberg and Ellen Whelan, Case No. 93-0125, Summary Final Order (Arbitrator Price, October 5, 1993) (Where declaration of condominium was silent as to pets and where the declaration provided that the use of the dwelling units, common elements and limited common elements were subject to reasonable rules and regulations, a rule prohibiting pets did not contravene any express provision or a right reasonably inferable therefrom). However, where the declaration is not silent but authorizes pets, it is reasonably inferable that the right to have not only a dog, but a dog of any size, is accorded the unit owner.

While some might think the provision, interpreted thusly, is unreasonably broad (what about a pet snake? or monkey?), it should be noted that it is accompanied by another broad provision

² Size, in an extreme case, may have a bearing on whether a dog is a nuisance prohibited by the declaration. However, the Arbitrator is unwilling to rule that, as a matter of law, all dogs exceeding 18 inches constitute a nuisance. Therefore, the rule will not be upheld on that basis.

that if a particular pet constitutes a nuisance, in the opinion of a majority of the Board of Administrators, then the owner shall be required to immediately remove the pet from the premises. See Article 8.6(d), Declaration.

This interpretation is supported by the division's declaratory statement in In Re: Meadowbrook Lakes View Condominium Association, Inc. (March 9, 1989). The division declared invalid a board rule limiting unit owners to no more than one rental per year where the declaration provided that no apartment could be leased less than 120 consecutive days each year.

The board rule is more restrictive than the provision in the declaration of condominium which clearly grants unit owners the right to rent their units, and places no restriction on the number of unit rentals during the period of ownership. Because the board rule places a restriction on the unit owners' right to rent in a manner not contemplated by the declaration of condominium, the rule, in effect, amends the declaration.

Like the declaration in Meadowbrook, the Timberwoods declaration places no restrictions on the type or size of pets that unit owners may have. It follows that a rule of the board of administration which attempts to impose such a restriction is invalid.


REMEDY

Based on the foregoing findings of fact and conclusions of law, it is ORDERED as follows:

The relief requested by the Petitioner is DENIED. That part of Article VI.A of the Rules and Regulations which limits the

size of dog which unit owners may have is ruled invalid.
Effective immediately upon receipt of this order the Association shall not enforce it against Respondents.

DONE AND ORDERED this 9th day of February, 1994, at Tallahassee, Leon County, Florida.


PATRICIA A. DRAPER, Arbitrator
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Professional Regulation
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Copies furnished to:

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RIGHT TO TRIAL DE NOVO

PURSUANT TO SECTION 718.1255, FLORIDA STATUTES, THIS DECISION SHALL BE BINDING ON THE PARTIES UNLESS A COMPLAINT IS FILED BY EITHER PARTY IN A COURT OF COMPETENT JURISDICTION IN THE CIRCUIT IN WHICH THE CONDOMINIUM IS LOCATED WITHIN 30 DAYS OF THE DATE OF MAILING THIS ORDER. THIS FINAL ORDER DOES NOT CONSTITUTE FINAL AGENCY ACTION AND IS NOT APPEALABLE TO THE DISTRICT COURTS OF APPEAL.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by U.S. mail, postage prepaid to:

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One North Dale Mabry, Ste. 820
Tampa, Florida 33609

this the 9th day of February, 1994.



Patricia A. Draper