

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

**IN RE: PETITION FOR ARBITRATION**

**Four Sea Suns Condominium  
Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 00-0559**

**John P. Pariseau and Mary  
Ann Pariseau,**

**Respondents.**

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**SUMMARY FINAL ORDER**

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

The association filed its petition in this matter on March 20, 2000. According to the petition, in April of 1998, the roofs on the condominium buildings were in a state of disrepair and the board determined to replace them. In order to replace the roofs, it was necessary to remove numerous awnings installed on the exterior of the buildings, and to re-install the awnings after the roof work was completed. The petition alleges that respondents' awning was not part of the condominium as originally constructed, but was installed by a prior owner of the unit.

The dispute involved in this case is which party is responsible for the expenses associated with removal and reinstallation of the awnings. Respondents failed to remove their awning at the request of the association, and the association removed the awning and re-installed the awning at its own expense. The association seeks reimbursement of

\$250 and a declaration that the awnings are the maintenance responsibility of the individual owners.

Respondents' answer was filed on April 19, 2000. Respondents admitted that the roofs needed replacement, and that the awnings affixed to the exterior of the building needed to be removed for the roof work to be performed. Respondents assert that the awnings were added by the builder/developer and not by the unit owners, and that because the awnings are fixtures attached to the exterior of the building, the association is responsible for their removal and maintenance. Respondents argue that the association has by its course of conduct over the years acknowledged its responsibility for the awnings by maintaining them with common expense monies, and by removing them during periodic repainting of the building. As defenses, respondents argue that due to the historic practice of the association in maintaining these structures, the association is estopped from now asserting that maintenance is the owner's individual responsibility; that the association has waived its ability to contest maintenance responsibility; and that an internal grievance procedure undertaken by the parties, resolved in favor of respondents, binds the parties.

The arbitrator entered an order following status conference on June 8, 2000, incorporated herein by reference. The order found that the internal grievance procedure that purported to bind the parties, was unconstitutional as depriving the parties of their right of access to the courts. The defenses of estoppel and waiver were addressed and ruled inapplicable in the order. The parties were invited to file any evidence regarding whether the developer or the owners had installed the awnings.

In response, the association verified that the as-built plans for the building were unavailable. The association also produced an affidavit signed by an owner, Mr. Burrows, on June 17, 2000. Mr. Burrows purchased his unit from the developer in 1967. In the

affidavit, he states that the awnings were not part of the original construction but were added later by the individual owners. He further stated that board approval for installation of the awnings was required, and that the individual owners would be responsible for the installation, maintenance, and repair of the awnings. Certain old photographs were also produced by the association showing the original construction of the building; no awnings are shown in the photographs. The association filed a supplemental status report on August 2, 2000, to which was appended the affidavit of the original developer of the condominium. According to this affidavit executed on July 24, 2000, the units as originally constructed did not have awnings. If an owner desired an awning, board approval was required.

The respondents do not dispute the affidavits offered by the association, but point out that the association has maintained the awnings for years, and that the respondents had requested the association earlier to produce any relevant records. The absence of any records was relied upon by respondents in forming their pre-litigation position in this case. The record does not support the contention that the association had earlier failed to produce its records; rather, the records produced by the association were created after the commencement of this action in response to the inquiry of the arbitrator. Based on the materials submitted, it is evident that the awnings were not part of the original construction of the building, but were instead subsequently added by individual owners. The association did not agree to maintain, repair, and replace the awnings.

Given the above facts, the law may be applied appropriately. Earlier arbitration decisions have addressed and identified the rights and liabilities of the parties in circumstances such as those presented here. The arbitration cases have uniformly held that in the absence of a provision to the contrary in the declaration or an agreement to the

contrary between an association and a unit owner, where the owner with the permission of the association constructs an improvement on the common or limited common elements which benefits the owner or his unit, the owner and not the association is responsible for maintenance, upkeep, and replacement of the improvement. In Continental Towers, Inc. v. Nassif, Arb. Case No. 99-0866, Final Order (November 24, 1999), the arbitrator held the owner responsible for removing and replacing tile on their limited common element balcony where removal of the tile was necessary for the association to repair the patio slab. In Lieberman v. La Mirage of Harbor Village Condominium Association, Inc., Arb. Case No. 97-0355, Final Order (March 11, 1999), the arbitrator determined that the owner and not the association was responsible for repairs to the exterior wall of a patio enclosure, where the owner had installed the enclosure and there was no agreement with the association to be responsible for repairs. Mere approval to build the improvement does not obligate the association to maintain it, especially where the unit owner is the sole beneficiary of the improvement. Accord: Carriage House Condominium Association, Inc. v. Bacon, Arb. Case Nos. 95-0866; 95-0477, Amended Final Order (January 13, 1998); Arena v. Cricket Clubhouse Condominium Association, Inc., Arb. Case No. 96-0106, Final Order (July 21, 1997); Harrison v. Land's End Condominium Association, Inc., Arb. Case No. 94-0298, Final Order (June 27, 1995).

Here, the awnings, installed by the original unit owners, are the maintenance responsibility of the owners benefiting from the awnings. When it becomes necessary to remove them for painting, the owner should remove them and should reinstall them, if desired. If the association desires to take over this maintenance function which touches and concerns the common elements, it may do so upon board decision, and may bill the individual owner for the actual costs of removing and replacing the awnings, or the

association may require the owner to contract for these services.

WHEREFORE, the respondents shall, within 30 days of the date of this order, reimburse the association the sum of \$250 representing the costs of removal or re-installation of the awnings. The arbitrator declares that the awnings are the maintenance responsibility of the respondents, who must remove the awnings when necessary for the association to maintain or repair the common elements. In the alternative, the association may itself undertake these responsibilities and may bill the respondents for the costs thereof.

DONE AND ORDERED this 24th day of August, 2000, 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 24<sup>th</sup> day of August, 2000: Edward Dicker, Esquire, St. John, Dicker, Caplan, Krivok, & Core, P.A., 500 Australian Avenue South, Suite 600, West Palm Beach, Florida 33401, and to Robert B. Burr, Esquire, Rutherford, Mulhall & Wargo, 2600 North Military Trail, 4<sup>th</sup> Floor, Boca Raton, Florida 33431.

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Karl M. Scheuerman, Arbitrator

**Right of 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 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 a petition for trial de novo does not toll the time for the filing of a motion seeking prevailing party costs and attorney's fees.