

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

IN RE: PETITION FOR CONDOMINIUM ARBITRATION

**ALEJANDRA ESPRIL DE FRANCO, ANEUDY
NEO GONZALEZ, ANTHONY MARRACION,
AVIEL ALT, AYSE KARADEMIER, ET AL.,**

Petitioners,

v.

THE RONEY PALACE CONDOMINIUM ASSOCIATION, INC,

Respondent.

Filed with
Arbitration Section

APR 30 2025

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

Arb. Case No. 2024-05-8348

SUMMARY FINAL ORDER

Issue

Are the Association's amendments of the guest access card rules that allow access by unaccompanied guests to use Association common facilities a reasonable exercise of the Association's rule making authority.

Procedural History

On October 10, 2024, Alejandra Espril Franco, Aneudy Neo Gonzalez, Anthony Marracion, Aviel Alt, Ayse Karademier, et al. ("Petitioners") filed a Non-Binding Arbitration Petition against The Roney Palace Condominium Association, Inc. (the "Association"), alleging that the Association has adopted and amended rules requiring guest access cards for access by unaccompanied guests to use Association facilities that violate the Association's governing documents. On October 14, 2024, an Order Requiring Answer was issued. On November 8, 2024, the Association filed its Answer to Petition for

Arbitration. On December 3, 2024, Petitioner's Response to Respondent's Answer to Petition for Arbitration was filed.

On December 6, 2024, an Order Setting Hearing for Case Management was issued. On December 10, 2024, the Association filed Newly Amended Rules and Regulations adopted by the Association's Board on November 27, 2024, along with the Notice for and Minutes of the November 27, 2024, Board meeting. On December 16, 2024, a telephonic Hearing for Case Management was conducted with Counsel for the Parties participating. The amended rules were addressed and it was agreed that Counsel would consult with their clients and see if they could agree on language in the Amended Rule pertaining to guest access cards for access by unaccompanied guests that would resolve this dispute.

On December 17, 2024, an Order Following Hearing for Case Management was issued. The Parties requested additional time to consult due to the holidays and illness. On January 28, 2025, an Order Granting Extension to File Status Report was issued. On February 20, 2025, Petitioner filed a Status Report which indicated that attached to the report were the Association's Rules and Regulations as amended in December 2024, and Petitioner's edits of those Rules. Petitioner further advised that after the Parties were unable reach an agreement on the final terms of the Rules, they mutually agreed to defer to the arbitrator's judgment in this matter.

Findings of Fact

1. The Association is the corporate entity responsible for the operation of The Roney Palace Condominium.
2. Petitioners are owners of units within the Condominium, and as such are

members of the Association.

3. In 2016 the Association adopted The Roney Palace Condominium Association, Inc., Rules and Regulations which included Rules regarding the use of guest access cards (the "Guest Access Card Rules"), which provide, in pertinent parts, as follows:

4. Guest access cards will only be issued for up to fourteen (14) days at a time.

5. The guest registration form must be filled out and provided to the Association at least three(3) business days in advance of the guest's arrival. If there is a guest access card fee due, it must be paid prior to the issuance of any guest access card. Guest requests for arrivals after office hours or weekends must be sent to the Association at least three (3) business days in advance with photos. Guest request forms can be found at www.RoneyPalaceCondo.com under "Documents."

6. Guest access card fees shall be as follows:

A. The guest access card fee for the first twenty (20) guest access cards issued for a unit in a calendar year (cards 1-20) shall be \$0.00.

B. The guest access card fee for the next ten (10) guest access cards issued for a unit in a calendar year (cards 21-30) shall be \$100.00 each.

C. The guest access card fee for the next five (5) guest access cards issued for a unit in a calendar year (cards 31-35) shall be \$200.00 each.

D. The guest access card fee for the next five (5) guest access cards issued for a unit in a calendar year (cards 36-40) shall be \$400.00 each.

E. The guest access card fee for any additional guest access cards issued for a unit in a calendar year (cards 41 and above) shall be \$500.00.

[Emphasis in original.]

4. By an undated Notice of Special Meeting of the Board of Directors of Roney Palace Condominium Association, Inc. To Discuss and Vote on Amendment to Association's Rules and Regulations (the "Notice"), the Association advised its members that there would be a Board meeting on September 24, 2024, and the Agenda included as an item "Discussion and vote by Directors on whether to adopt proposed amendment

to Association's Rule & Regulations." [Underline in original.] The draft of the amended Rules provided, in pertinent part at Paragraph No. 6, is as follows:

6. Guest access card fees shall be as follows:

- A. The guest access card fee for the first twenty (20) guest access cards issued for a unit in a calendar year (cards 1-20) shall be \$0.00.
- B. The guest access card fee for the next ten (10) guest access cards issued for a unit in a calendar year (cards 21-30) shall be \$100.00 each.
- C. The guest access card fee for the next five (5) guest access cards issued for a unit in a calendar year (cards 31-35) shall be \$200.00 each.
- D. The guest access card fee for the next five (5) guest access cards issued for a unit in a calendar year (cards 36-40) shall be \$400.00 each.
- E. The guest access card fee for any additional guest access cards issued for a unit in a calendar year (cards 41 and above) shall be \$500.00.

5. On September 24, 2024, the Association's Board of Directors held the noticed meeting. Based on concerns and input from the unit owners present at the meeting, the Board decided to table the proposed amendment to the Rules.

6. On October 2, 2024, the Association's manager sent an email to the owners advising that after careful consideration of the amendment proposed on September 24, 2024, the Board of Directors has decided to table the proposed amendment until a new guest card tier system can be formulated in the near future. The existing rules will be enforced, and Guests' access card costs will be as follows:

Cards 1-20 shall be \$0.00.
Cards 21-30 shall be \$100.00.
Cards 31-35 shall be \$200.00 each.
Cards 36 – 40 shall be \$400.00 each.
Cards 41 and above shall be \$500.00 each

7. On October 10, 2024, the Petition was filed in this dispute.

8. By a Notice posted on November 12, 2024, the Association advised that a Board Meeting would be held on November 27, 2024, which included as an Agenda item the following:

Discussion and vote by Directors on whether to adopt proposed amendment to Association's Rules and Regulations.

The Notice does not indicate that a draft copy of the proposed amendment was attached to the Notice.

9. The Minutes of the November 27, 2024, Board meeting reflect, in pertinent part, the following:

VI. Discussion and vote on proposed amendments to the current Rules & Regulations concerning Guest Card Tier System. Vice President, Lynn Nunes, provided an update to all owners present on the proposed amendment and the reasoning behind the boards [sic] decision to amend the guest card tier system. Questions were asked by owners present and answered by the board of directors and/or management. A motion was made to vote on the proposed amendment by Lynn Nuner, seconded by Andres Lizarralde. All in favor.

[Emphasis in original.]

10. The November 27, 2024, Amendment to the Rules & Regulations, amended Paragraph No. 6, in pertinent part, as follows:

6. Guest access card fees shall be as follows:

A. The guest access card fee for the first twenty (20) guest access cards issued for a unit in a calendar year (cards 1-20) shall be free.

B. The guest access card fee for all additional guest access cards issued for a unit in a calendar year (cards 21 et seq.) shall be \$50.00 each.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes. Because there is no issue of material fact in dispute after the filings

provided by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-45.030(3), Florida Administrative Code.

Petitioners challenge the Association's rules on guest access cards as not authorized by the Declaration. Petitioners also challenge that the rules imply that there is a 14-day limit for guest , and challenge the escalating cost of fees based on the number of guest cards requested by the unit owner. The Association maintains that their guest cards are only required for guest access to the Condominium's common and recreational facilities where guests are not accompanied by the unit owner or tenant they are visiting. The Rules do not limit the number of guests, so long as the overnight guests do not exceed the legal occupancy limit for the involved Unit. The Association asserts that Guest Access Card Rules have been properly adopted by the Association and are motivated by the Associations efforts to preserve the health, safety, and security of all Unit Owners and tenants.

Relevant Florida Statutory Authority

Section 718.111(2), Florida Statutes ("Fla. Stat"), provides that "[t]he powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws ..., as applicable."

Section 718.112(2)(c)(1), Fla. Stat. provides, in pertinent part:

Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency.

The Association's Governing Documents

The Association's By-Laws at Article Five, Section 4, provide in pertinent part:

All meetings of the Board of Directors of the Association shall be open to the members of the Association and notices of such meetings, stating the place and time thereof and including an identification of agenda items, shall be posted conspicuously at least forty eight (48) continuous hours prior to any such meeting to call the members' attention thereto....

Article 5, Section 16, of the Association's By-Laws, describes the Power and Duties of the Board of Directors. Specifically, Section 16(d) provides that Board has the power:

(d) To make and amend regulations respecting the organization and use of the Common Elements and Condominium Property and facilities, and the use and maintenance of the Condominium Units therein, and the recreational area and facilities.

Standard of Review

In *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637 (Fla. 4th DCA 1981), the Court found that condominium rules falling under the generic heading of use restrictions emanate from one of two sources: the declaration of condominium or the board of directors. Those contained in the declaration "are clothed with a very strong presumption of validity," *Id.* at 639. Board rules, on the other hand, are treated differently. When a court is 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. *Beachwood Villas Condominium v. Poor et. al.*, 448 So.2D 1143 (Fla. 4th DCA 1984). The initial inquiry is a review of the applicable statute, declaration, and by-laws. The Court in *Beachwood* formulated the following test: provided 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. *id.* at 1145. *Citing, The*

Trellises Condo. Ass'n, Inc. v. Stier, Arb. Case No. 00-0866, Summary Final Order (January 22, 2000).

Article XV of the First Amendment to the Declaration recorded on May 9, 2001, addresses Sales, Leases, and Transfers of Units but does not address guests. Here, the Declaration does not specifically address guest access cards or procedures for handling guests at the Association. Because the Declaration is silent there is no expressed conflict between the Declaration and the Rules. Under Article Five, Section 16(d) of the Association's By-Laws, the Board of Directors clearly has the authority to make and amend rules and regulations respecting use of the common elements. Applying the standard of *Hidden Harbor, supra* to the current set of facts, in adopting the Rules related to Guest Access Cards the Association had the authority to enact such Rules, provided such rules are reasonable.

However, here while the Association had the required authority, it improperly enacted the amended rule. The Board noticed and conducted a meeting on September 24, 2024, to amend the Rules and Regulation regarding guest access cards. However, at that meeting the Board failed to vote to amend the Rules and Regulations. Subsequent to that meeting the Association issued an email regarding the cost of access cards. In its Notice for the September 24, 2024, Board Meeting the Association acknowledged that a vote had to be taken by the Board to approve the amendment to the Rules. No such vote was taken at that meeting and the Association has presented no evidence that a Board vote was taken at a properly noticed meeting to approve an amendment to guest card costs at the September 24, 2024, Board meeting. The Board can only authorize an action by a majority vote of the Board after proper notice has been provided to the members.

As no vote was taken, no proper amendment to the rules resulted from the September 24, 2024, Board meeting.

Proper Notice of Board Meetings

On November 27, 2024, the Board voted to amend the Rules & Regulations. The Association provided the same notice language in its Notice for the September 24, 2024, and November 27, 2024, Board Meetings. The Agenda in the Notice for both meetings stated that a "Discussion and vote by Directors on whether to adopt proposed amendment to Association's Rule & Regulations."

Section 718.112(2)(c)1., Fla. Stat., and Article Five, Section 4, of the Association's By-Laws, both require that the notice for a board meeting must identify all agenda items. Here, the notices advised the unit owners that there would be a discussion and vote on a proposed amendment to the Rules and Regulations. The Notices provided the unit owners with no information regarding the nature of the proposed amendment. The Notices did not indicate that there was an attachment which contained the amendment or an explanation of what the amendment addressed. A Unit Owner receiving the notice would have no idea of the subject matter of the amendment. The purpose for requiring notice is so that the Unit Owners, who are interested in an issue, can attend the meeting and be prepared to address, support, or challenge an item listed on the agenda. As the arbitrator found in *Stacy Marcus v. 252 Jefferson Condominium, Inc.*, Arb. Case No. 2021-04-8394, Partial Summary Final Order (February 8, 2022):

....the notion that the notice of meeting concerning "252 Jefferson Condominium Violations" would put Board members and unit owners, not privy to any related email correspondence involving some board members and an attorney, on notice of what these "Condominium Violations" involved, requires a level of clairvoyance by the recipient that makes the notice requirement meaningless.

Notice for the November 24, 2024, Board meeting, regarding the approved amendment of the Rules and Regulations was inadequate for the same lack of specificity as the notice of the condominium violations the arbitrator rejected in *Stacy Marcus, supra*. An action that is within the board's authority taken at a meeting held without proper notice is voidable and may be ratified subsequently at a properly convened meeting.¹ See, *Oscar Moliterno v. South Palm Place Condominium Association, Inc.*, Arb. Case No. 2013-00-6859, Final Order (August 21, 2013), *Windledon Townhouse Cond. I Ass'n, Inc. v. Wolfson*, 510 So.2d 1106 (Fla 4th DCA 1987); *Lake Emerald Owner's Ass'n., Inc. v. Moore*, Arb. Case No. 95-0232 Summary Final Order (September 12, 1995); *Garing v. Sugar Creek Country Club Travel Trailer Park Assn., Inc.*, Arb. Case No. 93-0153, Final Order (March 23, 1994).

Although the Board had the authority to amend Rules related to guest cards, it did so improperly and thus those amended rules lack authority. The undersigned will not address directly whether the graduated fee scale which caps at \$500.00 per guest access card of Paragraph 6 of the original rules reflects reasoned or arbitrary and capricious decision making because both Parties appear to have moved on from that scale in their draft of the Rules submitted during the pendency of this arbitration.¹

¹ Because the Parties have asked for guidance, the undersigned provides the following with regard to the graduated costs based on the number of cards requested by a unit owner. In looking at the Declaration where it addressed costs in a similar instance, the Declaration at Article 15.09 provides that "No fee shall be charged in connection with the proposed sale, transfer or approval in excess of the expenditures reasonably required for credit report expenses which shall not exceed fifty dollars (\$50.00)." While this concept of fees appropriate when a transfer of a unit is made is not specifically applicable to fees associated with guest cards, it is instructive on how the drafters of the Association's Declaration viewed how fees should be approached. Consistent with this notion of reasonable fees, the cost of furnishing an additional guest card, over the first number of cards provided without a fee should reflect the expenditures required to provide an additional guest card. The escalating cost of the guest cards do not reflect this notion of reasonable

Accordingly, the undersigned finds that the purported October 2, 2024, and November 27, 2024, amendments to the Association's Rules are void.²

Based on the foregoing, it is ORDERED:

Petitioners' Request for Relief is GRANTED, in part, as follows:

1. The Association is precluded from enforcing the Amendment to the Association's Rules and Regulations improperly adopted at the Association's November 27, 2024, Board Meeting.
2. The Parties are directed to immediately confer to resolve the language in the Rules & Regulations related to guest card access. Any agreement reached will

reimbursement of expenditures but tend to reflect an approach that discourages Unit Owners and tenants from having more guests. The Declaration contains no limitations on the number guests that a unit owner or tenant can have, except in an overnight scenario, but this significant escalation of costs for a guest access card will undoubtedly have a chilling effect on the number of unaccompanied guests that a unit owner or tenant can or desires to have and arguably is not authorized by the Declaration.

² Solely in an effort to help the Parties resolve their dispute the undersigned addresses the proposed language of the two parties, supplied by Petitioners in their February 20, 2025, Status Report. The undersigned makes the following observations, which are not binding on the parties:

Paragraph 4, of the Association's proposal, is found to be reasonable as long as both parties agree that the 14 days is not a total limitation on card usage for an individual guest for the year.

Paragraphs 5 and 6 of the December 2024 Amendment by the Association should be deleted with Petitioner's Paragraph 6 introduced as the new Paragraph 5. It is proposed that the third sentence of the first paragraph of Petitioner's language of Paragraph 6 be amended as follows: Owners must provide notice to management by way of telephone call, email, or written notice at least one business day prior to the use of the blank guest cards. This notice must include the names of the guests who will be utilizing the cards and the start and end dates of their usage. (If this is acceptable to both Parties then paragraph 4 could be eliminated). The rest of the paragraph should be reviewed by the Parties for agreement.

The second paragraph is fine but the parties should try to agree on the initial cost of the replacement card, is it \$10 or \$50, or somewhere in between? Like the credit report the reasonable expenditures required for issuing a new guest card should be considered. The arbitrator's observations in Footnotes 1 and 2 are not binding on the Parties but are provided in an effort to assist the Parties in jointly drafting a new rule addressing guest access cards for the Association.

require a properly noticed and conducted Board Meeting and a majority vote from the Association's Board of Directors to adopt such Amendment.

DONE AND ORDERED this 30th day of April 2025, at Tallahassee, Leon County, Florida.

Signed: Mahlon C. Rhaney, Jr.

Mahlon C. Rhaney, Jr., 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

Trial de novo and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed in accordance with Section 718.1255, Florida Statutes. As provided by Section 718.1255, Florida Statutes, the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, Florida Administrative Code.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail, postage prepaid, to the following persons on this 30th day of April 2025:

Dania S. Fernandez, Esq.
Roberto Ace Fernandez, Esq.
Dania S. Fernandez & Associates, P.A.
13500 SW 88 Street, Suite 265
Miami, Florida 33186
Email: danias@dsfpa.com
Attorneys for Petitioner

Jose A. Torres, Esq.
Cuevas Garcia & Torres, P.A.
4000 Ponce De Leon Blvd., Suite 770
Coral Gables, Florida 33146
Email: jtorres@cuevaslaw.com
Attorney for Respondent

Signed: Mahlon C. Rhaney, Jr.
Mahlon C. Rhaney, Jr., Chief Arbitrator