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DIVISION OF
ADMINISTRATIVE
HEARINGS

Final Order No. BPR-2007-05464 Date: **7-12-07**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: *Brandon M. Nichols*

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

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

Petitioner,

vs.

**DOAH Case No. 06-4483
DOCKET No. 2004061089**

EDEN ISLES CONDOMINIUM ASSOCIATION, INC.,

Respondent.

_____ /

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FINAL ORDER

The Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) enters this Final Order in the above referenced matter.

PRELIMINARY STATEMENT

1. On August 21, 2006, the Division issued a Notice to Show Cause which alleged that the Respondent, Eden Isles Condominium Association, Inc. (Eden Isles) violated section 718.112(2)(f)(3), Florida Statutes. The Notice advised the Respondent of its right to request a hearing pursuant to chapter 120, Florida Statutes.

2. The procedural history of the proceedings before the Division of Administrative Hearings (DOAH) is set out by the Administrative Law Judge (ALJ) in the Recommended Order, which is incorporated in this Final Order.

3. On May 11, 2007, the ALJ entered a Recommended Order recommending that the Division enter a final order rescinding the Notice to Show Cause and exonerating Eden Isles of the charge of using reserve funds for purposes other than capital expenditures without first obtaining the unit owners' approval. References to the Recommended Order will be designated as RO and paragraph number.

4. The Division timely filed exceptions to the ALJ's legal conclusions over which it has statutory authority found in paragraphs 10, 11, 12, and 13 of the Recommended Order. Pet'r's Exceptions to Recommended Final Order (hereinafter Exceptions”).

5. The record reflects that two certified public accountants audited the association's books and financial records and determined that the association had established reserve funds. RO 2-3; Transcript 244, 247-48 and Resp. Composite Ex. 1 (hereinafter Eden ex. 1). The audits show that the association used the reserve funds for operating purposes or purposes other than designated by the reserve fund, e.g. roofing repairs. RO 5. However, the ALJ found that the association had always waived reserve funds, so the accountants were wrong. RO 4-5, 13. The ALJ determined that these funds were not reserve funds, but common surplus funds. RO 4. At the time it was issued, the Notice to Show Cause was supported by material facts, i.e. the audits and the association's financial records.

6. The ALJ cited to subsection 718.112(2)(f)2, Florida Statutes, as support for his ruling. However, as the Division pointed out in its exceptions, the subsection charged was section 718.112(2)(f)3, Florida Statutes. The question was not whether the association waived reserves for the two years at issue, but whether the association had used reserve funds established by the board in previous years for purposes other than the purpose for which the funds had been set aside without a unit owner vote. Exceptions at 3-5. At the time it was issue, the Notice to Show Cause was supported by law to the existing facts, i.e. the audits and the association's financial records.

7. Eden Isles did not file exceptions to the Recommended Order.

8. Eden Isles did not file a response to the Division's exceptions.

RULING ON EXCEPTIONS

9. Section 120.57(1)(k), Florida Statutes, requires the Division to rule on the exceptions.

10. The Division has reviewed the entire record in this matter. The Division does not agree with the ALJ's conclusions of law as to the application of the Condominium Act to the association's use of reserve funds for other purposes without a unit owner vote. However, based on its review of the entire record, the testimony and exhibits admitted at the hearing, and the ALJ's conclusions as to the weight of the evidence, the Division accepts the Recommended Order.

FINDINGS OF FACT

11. The Division hereby adopts and incorporates by reference the Findings of Fact numbered 1 through 5 as set forth in the Recommended Order.

CONCLUSIONS OF LAW

12. The Division issues this Final Order under sections 120.569(2)(l), 120.57(1)(l), and 718.501, Florida Statutes.

13. The Division adopts and incorporates by reference the Conclusions of Law numbered 6 through 13 set forth in the Recommended Order.


ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Division's Notice to Show Cause is dismissed.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 10th day of July, 2007.



**Division of Florida Land Sales,
Condominiums & Mobile Homes**


Michael T. Cochran, Director
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1031

NOTICE OF RIGHT OF APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE AGENCY CLERK, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, AT 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-1007 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Leonard G. Renaud, P.A., 8105 N.W. 155 Street, Miami Lakes, Florida 33016, this 18th day of July, 2007.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Division of Administrative Hearings
Janis Sue Richardson, Chief Attorney
David Tarbert, Senior Attorney
John Topa, Chief, Bureau of Compliance

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