

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **6/28/2013**
File # **2013-03687**

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

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

Petitioner,

v.

DBPR Docket No: 2010022817
DOAH Case No: 11-0180

WHITEHALL CONDOMINIUM OF
THE VILLAGES OF THE PALM
BEACH LAKES ASSOCIATION, INC.,

Respondent.

FINAL ORDER

Petitioner, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, enters this Final Order adopting the Recommended Order entered by the Administrative Law Judge on May 21, 2013.

On September 14, 2010, Petitioner, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("DBPR"), entered a Notice to Show Cause alleging that Respondent, Whitehall Condominium of the Villages of the Palm Beach Lakes Association, Inc. (Whitehall), in violation of Section 718.111(13), Florida Statutes, failed to provide the 2009 annual audited financial statement to the unit owners within 120 days of the end of the 2009 fiscal year, and that Whitehall did not provide unit owners with a copy of the 2009 annual audited financial statement, or in lieu of the report a notice that a copy of the audited financial statement was available at no cost upon request, within 120 days of the end of the 2009 fiscal year. Respondent disputed the allegations and timely requested a formal hearing.

On December 14, 2010, the case was referred to the Division of Administrative Hearings ("DOAH"), where it was docketed as Case No. 11-0180 and assigned to the Honorable Errol H. Powell, Administrative Law Judge.

Pursuant to Chapter 120.57(1), a hearing was held on March 4, 2013. The procedural history of the proceedings before DOAH is set out by the ALJ in the Recommended Order, which is attached and incorporated in this Final Order. The ALJ entered a Recommended Order, recommending that the Division enter a Final Order finding that Respondent violated section 718.111(13), Florida Statutes, and that the Division impose a \$5,000 penalty. Based upon review of the record, the Division rejects Whitehall's exceptions and adopts the Recommended Order in total under section 120.57(1)(k), (l), Florida Statutes.

RULINGS OF EXCEPTIONS

Whitehall timely filed 11 exceptions to the ALJ's findings of facts in paragraphs 17, 19, 20, and 28, and conclusions of law paragraphs 35, 36, 37, 39, 40, 41 and 42. Division timely filed its response to Whitehall's exceptions. Section 120.57(1)(l), Florida Statutes, requires the agency to explicitly rule on each exception. In order to overturn an ALJ's finding of fact, the agency must determine that a finding of fact was not based on competent substantial evidence or the proceedings did not comply with the essential requirements of law.

1. Whitehall's exception number 1 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
2. Whitehall's exception number 2 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.

3. Whitehall's exception number 3 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
4. Whitehall's exception number 4 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
5. Whitehall's exception number 5 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
6. Whitehall's exception number 6 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
7. Whitehall's exception number 7 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
8. Whitehall's exception number 8 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.
9. Whitehall's exception number 9 to the Recommended Order is denied

because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.

10. Whitehall's exception number 10 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.

11. Whitehall's exception number 11 to the Recommended Order is denied because there is competent substantial evidence in the record to support the ALJ's findings and based upon reasons written and stated by the Division.

FINDINGS OF FACT

The Division hereby adopts and incorporates by reference the Findings of Fact numbered 1 through 29 as set forth in the Recommended Order.

CONCLUSIONS OF LAW

The Division hereby adopts and incorporates by reference the Conclusions of Law numbered 30 through 51 as set forth in the Recommended Order.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

1. The ALJ's Recommended Order is adopted by the Division and;
2. Respondent Whitehall Condominium of the Villages of the Palm Beach Lakes Association, Inc. shall pay to the Division of Florida Condominiums, Timeshares, and Mobile Homes, 1940 N. Monroe Street, Tallahassee, FL 32399-1031, a penalty of Five Thousand Dollars and No Cents (\$5,000.00), by certified

check, cashier's check, or money order made payable to **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION;**


3. Whitehall shall file a copy of its 2009 audited financial statement with the Division within 30 days of the rendition of this Final Order and;

4. Whitehall shall maintain, as official records pursuant to Section 718.111(12)(a)(15), Florida Statutes, a copy of the Final Order and Recommended Order and;

5. Whitehall shall immediately comply with Section 718.111(13), Florida Statutes by mailing to each unit owner at the address last furnished to the association by the unit owner, or hand delivering to each unit owner, a copy of the 2009 audited financial statement or a notice that a copy of the 2009 audited financial statement will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

DONE and **ORDERED** this 24th day of June 2013, at Tallahassee, Leon County, Florida.




MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030


Attachment: Recommended Order

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY RESPONDENT 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(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL 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 John R. Sheppard, Esq., 1818 Australian Ave. South, Suite 400, West Palm Beach, FL 33409, this 28th day of June 2013.



Agency Clerk's Office

Copies furnished to:

Walter Trierweiler, Esq.

Errol H. Powell, Administrative Law Judge
Division of Administrative Hearings