

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

vs.

SHERRY MAYCUMBER RAPOSO,

Respondent.

Case Nos. 20-5371PL
20-5372PL
20-5373PL
20-5374PL

RECOMMENDED ORDER

The final hearing was held in this case by Zoom Video Conference in Tallahassee, Florida, on March 9 and 10, 2021, before Brian A. Newman, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: James C. Richardson, Esquire
Eddy Laguerre, Esquire
Department Business and Professional Regulation
2601 Blainstone Road
Tallahassee, Florida 32399-6563

For Respondent: Sherry Maycumber Raposo, pro se
4067 Longworth Loop
Kissimmee, Florida 34744

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent committed the acts alleged and violations charged in the Administrative Complaints, as amended¹; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On July 1, 2020, an Administrative Complaint was filed against Respondent. Two more Administrative Complaints were issued against Respondent on July 29, 2020, and a fourth Administrative Complaint was issued on October 23, 2020. The Administrative Complaints alleged that Respondent committed certain violations while she served as a licensed community association manager for the Turnberry Reserve Homeowner's Association. The four cases were forwarded to DOAH on December 10, 2020, and were consolidated on January 5, 2021.

The final hearing was held on March 9 and 10, 2021. Petitioner presented the testimony of Maria Napolitano, Oshmy Barbosa, Luz Franco, and Respondent. Petitioner's Exhibits 5, 12, 13, 32, 34, 44, and 50 were admitted in evidence. Respondent presented the testimony of Sandra Diaz, Ahmed Elwan, and Cliffie Kennedy.

The three-volume Transcript of the final hearing was filed on March 25, 2021. Respondent's request to extend the deadline to submit proposed recommended orders to April 15, 2021, was granted and the parties timely filed Proposed Recommended Orders, which have been considered in preparing this Recommended Order.

¹ The Administrative Complaints in DOAH Case Nos. 20-5371PL, 20-5373PL, and 20-5374PL were amended.

FINDINGS OF FACT

1. Petitioner, the Department of Business and Professional Regulation, is the state agency charged with regulating the practice of community association management pursuant to chapters 455 and 468, Florida Statutes.

2. Respondent, Sherry Maycumber Raposo, is licensed in Florida as a community association manager (CAM), having been issued license number CAM 39662.

3. At all times material to this proceeding, Respondent was the CAM for Turnberry Reserve Homeowner's Association, Inc. (Turnberry Reserve). Respondent provided CAM services to Turnberry Reserve through Management 35 Firm, Inc., a company she owned.

Records Requests

4. Petitioner charges Respondent with the failure to provide certain association records requested by Turnberry members Luz Franco, Maria Napolitano, and Oshmy Barbosa. Ms. Franco and Ms. Napolitano submitted records requests to Respondent on identical forms requesting the following records:

1. Financial Reports, reviews and audits for the past three (3) years.
2. Itemized and detailed records of all receipts and expenditures.
3. 2018 & 2019 minutes of all meetings of the board of directors & members.
4. Bids obtained over the past 12 months for any work to be performed.
5. Management 35 association management agreement.
6. Security service contract.
7. Current copy of all contracts to which the association is a party to.

Ms. Franco's records request is dated May 10, 2019, and Ms. Napolitano's records request is dated May 24, 2019.

5. Respondent testified, credibly, that all of the records requested were available for inspection on the Turnberry Reserve website, and that individuals were directed to the website to obtain these documents when any such request was received.

6. Respondent's testimony was corroborated by Sandra Diaz and Cliffie Kennedy, former board members of Turnberry Reserve. Ms. Diaz was a Turnberry Reserve board member from 2016 through 2018, and Mr. Kennedy was a Turnberry Reserve board member from 2019 through 2020. Ms. Diaz and Mr. Kennedy testified that the official records of Turnberry Reserve, including the latest financial reports and a copy of the contract with Management 35 Firm, Inc., were maintained on the Turnberry Reserve website as a matter of course, and were available for member inspection through the website.

7. Ms. Franco and Ms. Napolitano testified that their access to the Turnberry Reserve website was suspended for non-payment of fines levied against them by the Turnberry Reserve board, leaving them unable to access the records they requested. Respondent testified that the Turnberry Reserve board suspended member access to their individual financial ledgers when fines were delinquent, but did not suspend access to official association documents maintained on the website. Respondent's testimony was corroborated by Ms. Diaz and Mr. Kennedy, and is accepted where it conflicts with the testimony of Ms. Franco and Ms. Napolitano. The records requested by Ms. Franco, Ms. Napolitano, and Mr. Barbosa were available to them on the Turnberry website. As such, Respondent did not delay or deny access to association records.

Attempt to Videotape a CEC Meeting

8. Ms. Napolitano requested a meeting before the Turnberry Reserve Covenant Enforcement Committee (CEC) to appeal a fine that had been

levied by the Turnberry Reserve board. Ms. Napolitano's meeting before the CEC was held on August 31, 2019. The participants at the meeting were the three Turnberry Reserve homeowners who were appointed to serve on the CEC, Respondent, and Ms. Napolitano. No other Turnberry Reserve members were allowed to attend. The CEC members did not serve on the Turnberry Reserve board, no Turnberry Reserve board members attended the CEC meeting.

9. Ms. Napolitano attempted to videotape the CEC meeting on her cell phone and was told by Respondent that she was not allowed to do so. Ahmed Elwan, a member of the CEC, testified that the CEC asked that the meeting not be videotaped because the appeals by individual members who had been fined were private meetings and the CEC did not want the meetings posted on social media. Mr. Elwan testified that the CEC voted to reschedule the meeting because Ms. Napolitano became irate and started yelling when she was told she could not videotape the meeting. Mr. Elwan's testimony was credible and is accepted.

10. Article III, section 9 of the Turnberry Reserve bylaws states, in pertinent part, that "[a]ny Lot Owner may tape record or videotape meetings of the Board of Directors and meetings of the Members." Petitioner contends that Ms. Napolitano had a right to videotape her meeting before the CEC because it was a special meeting of the association members and therefore constitutes a meeting of the members.

11. The Turnberry Reserve bylaws authorize the board to appoint a committee, like the CEC, to carry out association business. The CEC meeting was not a meeting open to all members; it was a private meeting between Ms. Napolitano and the three unit owners appointed by the board to serve on the CEC. The CEC meeting was not a meeting of the Turnberry Reserve board, because none of the CEC members served on the board. Thus, the CEC meeting was not a meeting of the board or a meeting of the members, and

Ms. Napolitano had no right to videotape the CEC meeting under the Turnberry Reserve bylaws.

12. Petitioner also charges Respondent with making a “deceptive, untrue, or fraudulent representation” because she told Ms. Napolitano that she could not videotape the CEC meeting. As found above, the Turnberry Reserve bylaws did not confer any right to videotape a CEC meeting, and this charge was therefore unproven for this reason alone.

Candidate Forms for 2018 Annual Meeting

13. Petitioner contends that Respondent failed to send out candidate forms soliciting candidates for the 2019 Turnberry Reserve board, resulting in the cancellation of the 2018 annual meeting which was to be held to elect the 2019 Turnberry Reserve board. Petitioner alleges this failure constitutes the failure to serve as a liaison between the Turnberry Reserve board and unit owners and tampering with the Turnberry Reserve 2018 annual election.

14. Respondent testified that candidate forms soliciting candidates for the 2019 board were mailed to all 373 Turnberry Reserve unit owners in advance of the 2018 annual meeting. Ms. Diaz, Mr. Elwan, and Mr. Kennedy corroborated Respondent’s testimony, stating that they all received candidate forms in advance of the 2018 annual meeting.

15. There was no evidence to the contrary. Ms. Napolitano testified that she does not know whether anyone returned candidate forms to Respondent in advance of the 2018 annual election. Ms. Franco testified that she had received candidate forms in years past, but could not recall whether she received a candidate form in advance of the 2018 annual election.

Mr. Barbosa was not asked about the candidate form.

16. The testimony of Respondent, Ms. Diaz, Mr. Elwan, and Mr. Kennedy was credible and is accepted. Respondent mailed candidate forms to the Turnberry Reserve unit owners in advance of the 2018 annual election. Respondent did not fail to serve as a liaison between the Turnberry Reserve board and unit owners and did not tamper with the 2018 annual election.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2020).

18. In this proceeding, Petitioner seeks to discipline Respondent's license. Petitioner bears the burden of proving the allegations in the Administrative Complaints by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 492 So. 2d 797, 800 (Fla. 4th DCA 1983)). *Accord Westinghouse Elec. Corp., Inc. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991) ("Although this standard of proof may be met where the evidence is in conflict, ... it seems to preclude evidence that is ambiguous.").

Case No. 20-5371PL

19. In this case, Petitioner charges Respondent with violating section 468.4334(1), Florida Statutes (2018), by violating one of the Standards of Professional Conduct regulating community association management services. Specifically, Petitioner alleges that Respondent violated Florida Administrative Code Rule 61E14-2.001(3)(b) by delaying or denying Mr. Barbosa access to Turnberry Reserve official records. Section 468.4334(1) provides:

A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

Rule 61E14-2.001(3)(b) provides, in pertinent part, that a community association manager shall not “[d]eny or delay access to association official records to an owner or his or her authorized representative who is entitled to access... .”

20. Petitioner failed to prove, with certainty, what records Mr. Barbosa requested or when he requested the records. Nevertheless, Mr. Barbosa, and all other members of Turnberry Reserve, had access to the official records of the association at all times material to this case. Thus, Respondent did not violate rule 61E14-2.001(3)(b) as to any records that may have been requested by Mr. Barbosa.

Case No. 20-5372PL

21. In this case, Petitioner charges Respondent with delaying or denying Ms. Franco access to official records of Turnberry Reserve in violation of section 468.4334(1) and rule 61E14-2.001(3)(b).

22. Although Ms. Franco’s access to her association ledger was suspended due to delinquent fines, her access to the official association records was not suspended. Thus, Respondent did not violate rule 61E14-2.001(3)(b) as to any records that were requested by Ms. Franco.

Case No. 20-5373PL

23. In this case, Petitioner charges Respondent with delaying or denying Ms. Napolitano access to official records of Turnberry Reserve in violation of section 468.4334(1) and rule 61E14-2.001(3)(b).

24. Although Ms. Napolitano's access to her association ledger was suspended due to delinquent fines, her access to the official association records was not suspended. Thus, Respondent did not violate rule 61E14-2.001(3)(b) as to any records that were requested by Ms. Napolitano.

25. Petitioner also charges Respondent with violating rule 61E14-2.001(2)(a) when she told Ms. Napolitano that she could not videotape the CEC meeting held August 31, 2019. Rule 61E14-2.001(2)(a) requires Respondent to “[c]omply with the requirements of the governing documents by which a community association is created or operated.” The governing document at issue here is the Turnberry Reserve bylaws. The Turnberry Reserve bylaws do not create any right to videotape CEC meetings.² Thus, Respondent did not violate the Turnberry Reserve bylaws or rule 61E14-2.001(2)(a) when she told Ms. Napolitano that she could not videotape the CEC meeting on August 31, 2019.

26. Petitioner also charges Respondent with “[m]aking deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession” in violation of section 455.227(1)(m), Florida Statutes (2019), when she told Ms. Napolitano that she could not videotape the CEC meeting on August 31, 2019. Assuming, *arguendo*, that telling a unit owner that she cannot

² There is no ambiguity as to whether the Turnberry Reserve bylaws confer a right to videotape CEC meetings; the bylaws clearly do not. That said, the right to videotape under the bylaws would have to be clear and unmistakable to serve as adequate notice to Respondent that prohibiting Ms. Napolitano from videotaping the CEC meeting would subject Respondent to discipline. *See Griffis v. Fish & Wildlife Conser. Comm'n*, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); *Munch v. Dep't of Prof'l Reg., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); and *McClung v. Crim. Just. Stnds. & Training Comm'n*, 458 So. 2d 887, 888 (Fla. 5th DCA 1984).

videotape a meeting could constitute a violation of this statutory provision under the circumstances present here, Ms. Napolitano had no right to videotape the CEC meeting under the Turnberry Reserve bylaws, and this charge was likewise unproven for this reason alone.

Case No. 20-5374

27. In this case, Petitioner charges Respondent with the failure to “discharge duties performed on behalf of the association as authorized by this chapter loyally, skillfully, and diligently” in violation of section 468.4334(1) because she allegedly failed to solicit candidates for the 2019 Turnberry Reserve board in advance of the 2018 annual meeting. Petitioner also alleges that Respondent violated rule 61E14-2.001(2)(a) for the same reason.

28. Respondent did, however, mail candidate forms to all Turnberry Reserve unit owners in advance of the 2018 annual election. Thus, Petitioner failed to prove a violation of section 468.4334(1) or rule 61E14-2.001(2)(a).

29. Finally, Petitioner again charges Respondent with a violation of rule 61E14-2.001(3)(a) by suspending online access to Turnberry Reserve official records to unit owners with delinquent fines. As stated above, only unit owner access to their individual ledgers was suspended. Petitioner failed to prove that Respondent violated rule 61E14-2.001(3)(a).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing the Administrative Complaints at issue in this consolidated proceeding.

DONE AND ENTERED this 13th day of May, 2021, in Tallahassee, Leon
County, Florida.



BRIAN A. NEWMAN
Administrative Law Judge
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Filed with the Clerk of the
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this 13th day of May, 2021.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.