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

SHAWN MARTIN,

Petitioner,

v.

Case No. 2024-03-7842

OMEGA VILLAS CONDOMINIUM ASSOCAITION, INC.,

Respondent.

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FINAL ORDER OF DISMISSAL

On July 1, 2024, Shawn Martin (Petitioner) filed a petition for non-binding arbitration that named Omega Villas Condominium Association, Inc., as the respondent. On July 3, 2024, an order requiring the filing of an amended petition was entered. On July 22, 2024, Petitioner filed an amended petition that among other required filings expanded the type face of certain exhibits. In reviewing the petition to determine whether an exercise of jurisdiction over this dispute is proper the arbitrator re-examined the emails attached to the petition in support of Petitioner's contention that he gave the Association proper pre-arbitration notice.

In re-examining the pre-arbitration email the arbitrator found in only on email a statement that could possibly qualify as fulfilling the requirement of pre-arbitration notice: "When can I get all the documents that I requested? What date and what time? If I have to go to court or the State of Florida to obtain those records, then that is what I will do." This email is dated September 12, 2023.

Numerous arbitration case have held that pre-arbitration notice given more than six (6) months before the filing of the petition must be dismissed on the grounds that said

notice is "stale." See, *The Roney Palace Condominium, Inc. v. Robert Da Sadow, et.al*, Arb. Case No. 2015-04-4782, Final Order of Dismissal (Oct. 20, 2015)(pre-arbitration notice given approximately 8 months before filing petition was stale.). *Morgan Florida Properties, LLC v. Crystal Sands Owners Association, Inc.,* Arb. Case No. 2017-03-5189 Final Order of Dismissal (July 28, 2017)(14 months old pre-arbitration notice was stale); *Flamingo Court Condominium Association, Inc. v. Gomez*, Arb. Case No. 2016-02-8143, Order to Show Cause (June 17, 2016)(more than 8 months old pre-arbitration notice stale). *Pool v. Lake Shore Park Mobile Homeowners Association, Inc.*, Arb. Case No. 2016-01-0333, Final Order of Dismissal For Lack of Pre-Arbitration Notice (March 29, 2016)(pre-arbitration letter dated January 2, 2015, petition filed on October 2, 2015, notice was stale); *Portera v. Half Moon Bay by K. Hovnanian Condo. Ass'n, Inc.*, Arb. Case No. 2011-05-6801, Final Order Dismissing Petition without Prejudice (January 6, 2012)(the arbitrator found that the pre-arbitration notice was deficient and stale because it predated the petition by almost a year).

In the present instance the original petition in this case was filed on July 1, 2024. The pre-arbitration predates the petition by over nine (9) months. Pursuant to the above precedent, said notice is stale and the petition must be dismissed.[1]

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[1] The arbitrator notes for Petitioner's future reference that the statement of facts contains irrelevant facts and opinion and directs the reader to attached email records in order to gain a full understanding of the facts (including the dates on which certain events occurred). Rule 61B-45.019, Florida Administrative Code, requires a respondent to admit or the deny the facts contained in the petition. While attaching properly numbered exhibits to a petition in support of the ultimate facts alleged therein is helpful, said exhibits are not a substitute for a clear, concise and chronological statement, <u>in the body of the petition</u>, of the facts that constitute the dispute.

In addition, it appears that part of Petitioner's second request to inspect documents is in fact not a request to <u>inspect</u> documents but rather a request to <u>respond to written inquiry</u> per section 718.112(2)(a), Florida Statutes. *See*, email dated November 14, 2023 @2:24

ORDERED:

The petition is DISMISSED, and the case is CLOSED.

Done and Ordered on July 25, 2024, in Tallahassee, Leon County, Florida.

J. A. Spejenkowski

J.A. Spejenkowski, Arbitrator
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Division of Florida Condominiums,
Timeshares and Mobile Homes
Arbitration Section
2601 Blair Stone Road
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Telephone: 850.414.6867
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Copy via US Mail to:

Shawn Martin
1760 NW 73RD Ave
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p.m.: "Certified Records Request #2: Identify all past and present association bank accounts since 2018 to present." Written questions to an association are not subject to arbitration per section 718.1255, Florida Statutes. *See, Agrelo v. Coral Gates East Condominium Association, Inc.*, Arb. Case No. 2023-05-2396, Preliminary Order on Jurisdiction Petitioner's Written Questions to Association (Petitioner required to remove from petition count concerning written questions to association served per section 718.112(2)(a), Florida Statutes, because said dispute not within the jurisdiction of the arbitrator.

Finally, Petitioner's Second Request states "Let me know what your thoughts are here on the best way to get me some copies of all the above items I requested." Section 718.111(12), Florida Statutes requires an association to produce for inspection, not to provide copies. Requesting copies of records, as opposed to requesting an opportunity to inspect records, requires dismissal of the petition. *See, Lovejoy v. Lands End Condominium Association, Inc.*, Arb. Case No. 2015-04-3252, Final Order of Dismissal (October 9, 2015) (Case dismissed because owner requested copies of records rather than opportunity to inspect records.)