

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

FILED	
Department of Business and Professional Regulation Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/29/2020
File #	2020-03089

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

Petitioner,

v

CASE NO 2019060726

YORKTOWN ASSOCIATION, INC

Respondent

CONSENT ORDER

Petitioner, the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter the Division), and Respondent, Yorktown Association, Inc , (hereinafter Respondent or Association), stipulate and agree to the terms and issuance of this Consent Order, pursuant to sections 120 57 and 718 501, Florida Statutes, as follows

PRELIMINARY STATEMENT

1. The Division is the state "agency," as defined by section 120 52(1), Florida Statutes, statutorily responsible for enforcement of the Florida Condominium Act, chapter 718, Florida Statutes, and the administrative rules promulgated thereunder
- 2 The Division has investigated Respondent for certain alleged violations of chapter 718, Florida Statutes, in Division investigative file number 2019060726
3. Respondent desires to resolve this investigation without formal administrative or judicial proceedings which might otherwise be available
- 4 Respondent and the Division agree that the statutory citations referenced in this Consent Order are intended to reference the correct statutory citations for the year(s) in which the violation(s) occurred as well as the Division's proper enforcement authority, and that any errors in such statutory

citations are not substantive or prejudicial to either party

STATEMENT OF FACTS

5 The Division is the state agency charged with enforcing chapter 718, Florida Statutes, the Condominium Act, and the administrative rules

6 Yorktown is a "residential condominium," as defined in section 718 103(23), Florida Statutes, containing forty-eight (48) residential units located in Palm Beach County, Florida

7. Respondent is the condominium "association," as defined in section 718 103(2), Florida Statutes, which operates Yorktown

8 At all times material hereto, Respondent has controlled the Association and was responsible for the Association's operations, duties, and responsibilities under chapter 718, Florida Statutes

9 Respondent is charging transfer fees in excess of the statutory limit of \$100 00 in violation of section 718 112(2)(i), Florida Statutes Specifically, the Association is charging \$100 00 for application fee payable to the Association, and \$50 00 for processing fee payable to the management company, Gulfstream Services Management, Inc

10 On or about March 5, 2020, Association Property Manager, Mr Jason Weeks, indicated in response that the Association billed \$100 00 to cover the cost for all background checks and office supplies for each applicant, whereas the additional \$50 00 are billed for management's time to process the application which included copies of the rules and additional information needed during the process

11 A review of the Association Lease/Sale Application by the Division confirmed the statement made by Mr Weeks wherein the Association charged a total of \$150.00 to complete the application process:

- a) Check for \$100 00 made payable to Yorktown Association, Inc for the non-refundable application fee (per married couple or applicant)
- b) Check for \$50 00 made payable to Gulfstream Services Management, Inc for the non-refundable Processing fee

12 There is competent substantial evidence to support the foregoing Statements of Fact

CONCLUSIONS OF LAW

13 The Division has jurisdiction over these proceedings pursuant to chapters 120 and 718, Florida Statutes, and is authorized to enter into this Consent Order, assess civil penalties, and consider evidence of mitigation of violations, pursuant to section 718 112(2)(i), Florida Statutes

14 Section 718.112(2)(i), Florida Statutes, states in pertinent part that

"No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83."

15 Respondent is in violation of section 718 112(12)(i), Florida Statutes, for charging transfer fee in excess of the statutory limit of \$100 00

16 Respondent agrees that there is competent substantial evidence to support the foregoing conclusions of law

AGREEMENT

17 Civil Penalty and other relief:

- (a) Respondent shall remit to the Division a civil penalty in the amount of Nine Hundred and Sixty dollars and No Cents (\$960 00) by certified check, cashier's check, or money order made payable to **DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION** as a condition precedent to the Division's execution of this Consent Order
- (b) Respondent shall refund to or provide credit to Ms Donna Valentine's unit #805 ledger for amount (\$50 00) charged in excess of \$100 00 within fourteen (14) days of receipt of the signed Consent Order
- (c) Respondent shall provide evidence that the Association took corrective action that it is no longer charging transfer fee in excess of the statutory limit of \$100 00 per applicant other

than husband/wife or parent/dependent child, which are considered one applicant within fourteen (14) days of receipt of the signed Consent Order

- (d) Respondent agrees to post a copy of this Consent Order, as signed by both parties, or a notice that a copy of this Consent Order is available upon request, in a conspicuous place of the condominium property or where notices for meetings are normally posted for thirty (30) continuous days. Posting should begin no later than two (2) business days after receiving the copy of the Consent Order, as signed by both parties, from the Division. Respondent agrees to evidence compliance with this requirement by means of an affidavit signed by the responsible party attesting to the posting of either this Consent Order or notice that a copy of this Consent Order is available upon request. The affidavit shall be received by the Division within forty-five (45) days after Respondent's rendition of a copy of this Consent Order, as signed by both parties.
- (e) Respondent agrees to maintain its copy of this Consent Order as part of the Association's official records, in accordance with section 718.115(2), Florida Statutes.
- (f) Respondent agrees that all items it has agreed to remit, provide, submit or in any way furnish to the Division shall be sent by certified mail, return-receipt requested to the following address:

**Division of Florida Condominiums, Timeshares, and Mobile Homes
Bureau of Compliance
Department of Business and Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-1030**

- (g) Respondent agrees that its duties pursuant to this Consent Order shall not be discharged until all items that Respondent has agreed to remit, provide, submit or in any way furnish to the Division have been received by the Division at the address above.

18 **Attorney's fees and prevailing party** The Division and Respondent agree that Respondent, through the rendition of this Consent Order, is not a "prevailing small business party" as that term is defined by section 57.111, Florida Statutes, and it is mutually agreed that Respondent shall bear its

own costs and attorney's fees that are in any way associated with this action

19 **Duress** Respondent acknowledges and agrees it has entered into this Consent Order without duress and for the uses and purposes stated in this Order

20 **Effectiveness.** This Consent Order is effective on the last date executed below and upon its issuance it shall be a final administrative order This Consent Order is fully enforceable by the Division under the provisions of sections 120 69 and 718 501, Florida Statutes

21. **Failure to Comply** As acknowledged and agreed between the Division and the Respondent, this Consent Order is directly enforceable by petition to the Circuit Court of Leon County, Florida, as provided by section 120 69, Florida Statutes For any violation by Respondent of the provisions of this Consent Order, Respondent understands the Division shall bring such action as is necessary to seek compliance with chapter 718, its administrative rules, and the provisions of this Consent Order. This Consent Order does not constitute a waiver of the rights of Respondent to a contested hearing on any subsequent alleged violation of this Order

22 **Future actions** Nothing in this order shall be construed to waive or restrict the Division's right to initiate any action against Respondent pursuant to chapters 120, and 718, Florida Statutes, including, but not limited to, administrative or civil action or referral for criminal prosecution if facts or information not presently known or available to the Division come to its attention subsequent to the execution of this Consent Order The Division expressly reserves all rights to pursue such remedies should a cause of action exist This agreement shall be binding upon the parties their successors, and assigns

23 **Releases** Respondent, for itself and any legal representatives, administrators, successors, and assigns, hereby, without reservation, voluntarily releases, waives, absolves, and forever discharges, to the full extent permitted by law, the Division and its employees, agents, successors, appointed officials, assigns, representatives, any and all other officials and employees of the State of Florida, and legal representatives, all in their official and individual capacities, and including former members of any of the foregoing groups, from any and all claims, demands, actions, judgments, causes of action, or suits at law or in equity, of any kind and nature, whether these claims are known to Respondent at this time or unknown, suspected or not suspected, or by reason of any damage, injury, or loss, including but not limited to, actual

damages, compensatory damages, punitive damages, attorneys' fees, interest, costs, other special damages, general damages, and/or other equitable relief arising out of this administrative proceeding. The Division accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist.

24. **Time.** Time is of the essence in this Consent Order.

25. **Waivers.** Respondent knowingly and voluntarily waives


(a) any right to an administrative hearing provided by chapters 120, and 718, Florida Statutes,

(b) any right to the issuance of a recommended order by an administrative law judge from the Division of Administrative Hearings or from the Division, and

(c) any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of this Consent Order.

26. **Entire Agreement.** This Consent agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or agreements other than those contained herein and this document shall supersede all previous communications, representations, and or agreements whether written or verbal, between the parties hereto.

WHEREFORE, Respondent, Yorktown Association, Inc. by its duly authorized representative, David Chapman, pursuant to the following certified resolution agrees to the terms, conditions and issuance of this Consent Order on this 5th day of May, 2020, 2020.



President
(Title)
David Chapman
(Type or Print Name and Title)

State of Florida
County of Palm Beach

THE FOREGOING INSTRUMENT, CONSENT ORDER, WAS ACKNOWLEDGED BEFORE ME THIS 22ND DAY OF May, 2020 BY Heather M. Helphrey WHO PRODUCED IDENTIFICATION IN THE FORM OF Florida Drivers License WHICH WAS EXAMINED BY ME, AND WHO (DID)(DID NOT) TAKE AN OATH, AND ACKNOWLEDGE THAT HE/SHE IS THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT

(Signature)

State of Florida

Notary Public



My Commission Expires: 12/19/2021

CORPORATIONS MUST COMPLETE THE FOLLOWING PARAGRAPH IF APPLICABLE. IF IT IS APPLICABLE, IT MUST BE SET OUT IN THE BODY OF THE INSTRUMENT.
BE IT RESOLVED, THAT ON May 7, 2020, a meeting of the Board of Directors was held pursuant to legal notice and that the Officer's signature appearing on this Consent Order, executed in Case No 2019060726, on behalf of this Corporate Respondent, is duly authorized, empowered and directed to execute the Consent Order on behalf of the Corporation and is further empowered to execute any other documents necessary to fulfill the intent of the Consent Order

IN WITNESS WHEREOF, I have hereunto set my HAND AND SEAL of this Corporation this 22nd day of May, 2020

(Signature)

CORPORATE SECRETARY'S SIGNATURE

CORPORATE SEAL

REPRESENTATIVE/ATTORNEY

Jason Weeks
CONTACT PERSON

1500 Galkoff Blvd
Suite 220 BB W 33426
561-777-3578
(Address Telephone)

(Address, Telephone)

DONE AND ORDERED in Tallahassee, Leon County, Florida this 27 day of May, 2020



BOYD MCADAMS, Director
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-1030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Consent Order has been furnished by U S Mail to Association's Registered Agent, Constance S King, CP, FRP, 712 U S Highway One, Suite 400, North Palm Beach, Florida, 33408, this 29th day of May, 2020


AGENCY CLERK'S OFFICE

Copies furnished to

Mark Brown
Financial Examiner/Analyst II
Bureau of Compliance

Yorktown Association, Inc
Board of Directors
c/o Mr David Chapman, President
1500 Presidential Way, Unit #703
West Palm Beach, FL 33401

Mr Jason Weeks, Property Manager
Gulfstream Services Management, Inc
c/o Yorktown Association, Inc
1500 Gateway Blvd, Suite 220
Boynton Beach, FL 33426