

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

JENNIFER ALLEGRA

Docket # 2018040197

Petitioner,

THE TOWERS OF KEY BISCAWAYNE, INC.

Intervener

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MOTION TO INTERVENE

INTERVENOR, THE TOWERS OF KEY BISCAWAYNE CONDOMINIUM ASSOCIATIONS (hereinafter "ASSOCIATION"), pursuant to Florida Administrative Code Rule 28-105.0027, hereby moves to intervene in the Request for Declaratory Statement filed by Petitioner, Jennifer Allegra, and states as follows:

1. This is an action by the PETITIONER, as co-owner of the unit located at 1121 Crandon Boulevard, Apt D 504, Key Biscayne, Florida 33149.
2. Petitioner filed a Request for Declaratory Statement (the "Request") on July 31, 2018.
3. Intervener has the requisite interest in the Petitioner's complaints as the issues sought for consideration are encompassed by the present controversy between the parties.
4. The ASSOCIATION's substantial interests will be affected by the disposition of the declaratory statement.
5. The ASSOCIATION moves the presiding officer for leave to intervene.
6. This Request for Declaratory is not the appropriate means for determining the conduct of the ASSOCIATION.

7. The ASSOCIATION requests a hearing pursuant to Florida Administrative Code Rule 28-105.003.

8. The ASSOCIATION requests that the DBPR enter a final order denying the petition.

9. There is no actual and practical need for a declaratory statement.

10. PETITIONER has a complaint about an action that has already taken place.

11. There are disputes of material fact as raised by the PETITIONER.

12. The PETITIONER seeks to have the DBPR void a contract between the ASSOCIATION and a general contractor for the complete replacement of windows at the condominium.

13. The events that have already taken place include the signing of the contract AND installation of windows in approximately 25% of the units.

14. The DBPR is required to provide notice to the general contractor of the petition filed by the PETITIONER, as the general contractor will be substantially affected by increased costs of over \$3,000,000.

15. The PETITIONER is unable to answer ALL of the following questions in the affirmative:

- a. Do you have an actual and practical need for a statement? - NO
- b. Does your situation deal with a present set of undisputed facts? - NO
- c. Has a controversy arisen over how the law applies to the question(s) that you are asking? - NO
- d. Are you depending on the law to guide proposed actions? - NO
- e. Are you or your association directly involved in this question? – YES

- f. Does your situation involve a statute, rule or order over which the Division has authority? - YES
16. Florida Statute 718.113(c) states, “The board may operate shutters, **impact glass**, **code-compliant windows** or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection **without permission of the unit owners** only if such operation is necessary to preserve and protect the condominium property and association property. The installation, **replacement**, operation, repair, and maintenance of such shutters, **impact glass**, **code-compliant windows** or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are **not a material alteration** to the common elements or association property within the meaning of this section.
17. The ASSOCIATION’s Board voted to replace the old windows and shutters with code-compliant impact glass windows.
18. The replacement is currently underway.
19. The code-compliant impact glass windows are not a material alteration.
20. All units are being provided with the same windows.
21. In support of its position, the ASSOCIATION relies on the Summary Final Order entered in In Re: Petition for Arbitration Brickell Townhouse Association, Inc. v. Jules Bagdan Case No. 00-1683.
22. In Brickell Townhouse, the Association only replaced two-thirds of the windows with new windows.
23. The DBPR ultimately held the following: “The board of administration has the legal authority to replace the original windows. Review, A.N. Inc. v. Seaplace Association, Inc., Arb. Case No. 98-4251, Final Order (November 19, 1998), in which the arbitrator affirmed the

authority of the board to replace the condominium's aged windows with significantly upgraded window styles, components, and materials. Also, sections 718.113(1), F.S., and 718.111(4), F.S., provide that the association shall have the duty to maintain, repair, and protect the common elements. Where the board is acting pursuant to its duty to repair and preserve the common elements, it is entitled to use and rely on its business judgment. See, *A.N. Inc. v. Seaplace Association, Inc.*, Arb. Case No. 98- 4251, Final Order (November 19, 1998); *Raska v. Fountains Association, Inc.*, Arb. Case No. 93-0364, Final Order (January 21, 1994). Here, there is evidence that the association consulted with its experts and arrived at its conclusion that replacement of the remaining windows was appropriate and warranted. Respondent has not demonstrated any errors made by the association or any basis upon which to reverse the decision of the board.”

24. The ASSOCIATION here also relied upon its business judgment in replacing the code-compliant impact glass windows.

25. The ASSOCIATION came to this decision after consulting with its expert, several general contractors, and several window manufacturers.

26. The ASSOCIATION believes the documents will support the DBPR's conclusion to deny the petition.

27. “Respondent shall do nothing to interfere with the commencement, implementation, or completion of the project but shall instead fully cooperate with the association in its efforts to timely complete its replacement project.” In Re: Petition for Arbitration *Brickell Townhouse Association, Inc. v. Jules Bagdan* Case No. 00-1683.

28. The ASSOCIATION believes the DBPR should similarly hold that PETITIONER shall do nothing to interfere with the contract currently between the ASSOCIATION and the general contract to replace the old windows with code-compliant impact glass windows.

WHEREFORE, Intervener, **The Towers of Key Biscayne Condominium Associations**, respectfully request this Court: (a) grant the Motion to Intervene; (b) deny the petition, and (c) for such other further relief as the DBPR deems just and proper.

**DeMAHY LABRADOR DRAKE VICTOR
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via email to the following on this 28th day of August 2018:

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