

FILED	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/14/2020
File #	2020-01313

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

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

Petitioner,

v.

CASE No. 2019027186

TOWERS OF KEY BISCAYNE, 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, Towers of Key Biscayne, Inc., (hereinafter Respondent), 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 that term is defined by section 120.52(1), Florida Statutes, that is 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 2019027186.

3. Respondent desires to resolve this investigation without formal administrative or judicial proceedings that might 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 Division's administrative rules.

6. Towers of Key Biscayne is a "residential condominium," as that term is defined in section 718.103(23), Florida Statutes, containing 538 residential units located in Miami-Dade County, Florida.

7. Respondent is the condominium "association," as that term is defined in section 718.103(2), Florida Statutes that operates Towers of Key Biscayne.

8. Paragraph 44, Exhibit D, of the Respondent's bylaws provides that the association's fiscal year is concurrent with the calendar year (January 1st – December 31st).

9. Respondent was required to provide to the unit owners by mail or hand delivery, a copy of the 2018 audited financial statements or provide the unit owners a notice of availability within 120 days after the end of the fiscal year.

10. Respondent's Attorney in response to the Allegation provided a letter of engagement dated April 23, 2018 signed by the Board on September 25, 2018 for the preparation of the 2018 year-end financial statements.

11. Respondent provided a copy of the 2018 year-end financial statements dated August 29, 2019.

12. Respondent provided a copy of the notice of availability to the unit owners on September 6, 2019, which falls outside 120 days statutory requirement.

13. Respondent agrees that there is competent substantial evidence to support the foregoing Statement of Facts.

CONCLUSIONS OF LAW

14. 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 sections 120.57 and 718.501(1)(d), Florida Statutes.

15. Respondent failed to provide the 2018 audited financial statements or notice of availability thereof, to unit owners by April 30, 2019, in violation of section 718.111(13), Florida Statutes.

16. Section 718.111(13), Florida Statutes, states in part: "...within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial statement for the preceding fiscal year. Within 21 days after the final financial statement is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial statement or a notice that a copy of the financial statement will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner..."

17. Section 718.111(13)(a), Florida Statutes states in part, "...An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the

association's total annual revenues, as follows: ... An association with total annual revenues of \$500,000 or more shall prepare audited financial statements..."

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

AGREEMENT

19. Civil Penalty and other relief:

(a) Respondent shall remit to the Division a civil penalty in the amount 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** as a condition precedent to the Division's execution of this Consent Order.

(b) Respondent agrees to post a copy of this Consent Order, as signed by both parties, in a conspicuous place of the condominium property or where notices for meetings are normally posted for 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.

(c) Respondent agrees to maintain its copy of this Consent Order as part of the Association's official records, in accordance with section 718.111(12), Florida Statutes and rule 61B-23.002(7)(b), Florida Administrative Code.

(d) 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:

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

(e) 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 actually been received by the Division at the address above.

20. **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.

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

22. **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.

23. **Failure to Comply.** As acknowledged and agreed between the Division and 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.

24. **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.

25. **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.

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

27. **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.

28. **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, Towers of Key Biscayne, Inc., by its duly authorized representative, Richard Michaelson, Secretary pursuant to the following certified resolution agrees to the terms, conditions and issuance of this Consent Order on this 29th day of JANUARY, 2020.

[Signature]
Secretary
(Title)
Richard Michaelson
(Type or Print Name and Title)

State of FLORIDA
County of DADE

THE FOREGOING INSTRUMENT, CONSENT ORDER, WAS ACKNOWLEDGED BEFORE ME THIS 29 DAY OF JANUARY, 2020. BY Richard Michaelson WHO PRODUCED IDENTIFICATION IN THE FORM OF [REDACTED] 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.

(SEAL)

[Signature], Notary Public
State of Florida



CORPORATIONS MUST COMPLETE THE FOLLOWING PARAGRAPH TO THIS ORDER.

BE IT RESOLVED, THAT ON JANUARY 29th, 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. 2019027186, 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 29th day of JANUARY, 2020.


CORPORATE SECRETARY'S SIGNATURE

CORPORATE SEAL


Donell A. Hicks
REPRESENTATIVE/ATTORNEY
806 Douglas Road, 12th Floor
CORAL Gables, FL 33134
(305) 443-4850
(Address, Telephone)

Joe MAURA, General Manager
CONTACT PERSON
1121 CRANDON BLVD, Main Office
Key Biscayne, FL 33149
(305) 361-9114
(Address, Telephone)



DONE AND ORDERED in Tallahassee, Leon County, Florida this 7 day of February, 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. Certified Mail to SKRLD, Inc. Jonathan M. Mofsky, Esq. Registered Agent of Towers of Key Biscayne, Inc. 201 Alhambra Circle, Suite 1102, Coral Gables, Florida 33134, this 14th day of February, 2020.



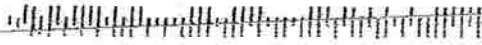
AGENCY CLERK'S OFFICE

Copies furnished to:

Nicholas DuVal Esq., Chief Attorney
Chief Attorney
Office of the General Counsel

Graciela Irene Jimenez
Financial Examiner/Analyst II
Tel # (305) 629 -1888
graciela.jimenez@myfloridalicense.com

CERTIFIED MAIL



7019 0140 0000 6235 7429

www.MyFloridaLicense.com

SKRLD, Inc.
Jonathan M. Mofsky, Esq.
Registered Agent of Towers Of Key Biscayne, Inc.
201 Alhambra Circle, Suite 1102
Coral Gables, Florida 33134