AlaFile E-Notice

58-CV-2017-901186.00
Judge: PATRICK E. KENNEDY

To: ALFORD JOHN MICHAEL
jma@alfordbarnes.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

TIMOTHY O. HULSEY V. WYNLAKE RESIDENTIAL ASSOCIATION, INC. ET AL
58-CV-2017-901186.00

The following matter was FILED on 1/20/2021 8:24:58 AM

Notice Date: 1/20/2021 8:24:58 AM

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DOCUMENT 92

ELECTRONICALLY FILED
1/20/2021 8:25 AM
58-CV-2017-901186.00
CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA
MARY HARRIS, CLERK

IN THE CIRCUIT COURT OF SHELBY COUNTY, A

TIMOTHY O. HULSEY, individually and in a Representative capacity as a Member of Wynlake Residential Association, Inc.,

PLAINTIFF,

CASE NO:CV17-901186

vs.

WYNLAKE RESIDENTIAL ASSOCIATION, INC., an Alabama nonprofit corporation;

WYNLAKE DEVELOPMENT, LLC, an Alabama limited liability corporation;

SERMA HOLDINGS, LLC, an Alabama limited liability corporation;

BUILDER1.COM, LLC, an Alabama limited liability corporation;

J. MICHAEL WHITE, a member of the WYNLAKE RESIDENTIAL ASSOCIATION, INC. Board of Directors in his official capacity and personal capacity;

SHANDI NICKELL, a member of the WYNLAKE RESIDENTIAL ASSOCIATION, INC. Board of Directors in her official capacity and personal capacity;

MARY P. WHITE, a member of the WYNLAKE RESIDENTIAL ASSOCIATION, INC. Board of Directors in her official capacity and personal capacity;

JIM WHEAT, a member of the WYNLAKE RESIDENTIAL ASSOCIATION, INC. Board of Directors in his official capacity and personal capacity;

FICTITIOUS DEFENDANTS, A, B, C, and D being those Defendants who participated in the facts alleged herein. The identity of said fictitious parties is presently unknown to Plaintiff but will be provided by amendment when ascertained.

Jointly and Severally,

DEFENDANTS,

ORDER

This matter came before the Court based on the Complaint filed by the Plaintiff, and the Arbitration Order by this Court. After considering the post-arbitration pleadings and other filings presented to this Court, the Court enters the following Order:

1. That the Defendants' Motion to Vacate or Set Aside is hereby DENIED,

2. That the Final Award, dated 10/4/19, which was entered as Judgment against the Defendants, jointly and severally by this Court on 8/24/20 stands as Ordered.

DOCUMENT 92

3. That the portions of the Final Award which were in the nature of injunctive relief not be stayed during the pendency of any appeal taken.

4. Defendants are enjoined from actions which violate the portions of that Final Award which are enjoined and shall cease and desist from all such actions which the Defendant or Defendants have already or are currently undertaking, such as, to-wit:
   a. Page 7 of the Final Award states that the Defendants shall not levy assessments or use member dues for, inter alia, indemnity. The Defendants have already attempted to levy an assessment for attorney's fees against the Plaintiff. This is an impermissible attempt by the Defendant to indemnify himself in contravention of the Final Award.
   b. Page 7 of the award further states that the Defendant should act, "in good faith and in a manner that is transparent and consistent with the rights of the members." Additionally, Page 5 of the Final Award states that, "Going forward there should ***not*** (see Arbiter Email Exhibit A explaining typo) be an increase in dues because the "ground lease" cannot be assessed." The residents have received their yearly assessment letters with no transparency or budgetary justification whatsoever for the amount of the assessment. The Defendants must cease and desist from proceeding as if the Final Award does not exist.

5. That Defendant be ordered to immediately pay a Court-approved Supersedeas Bond or, in the alternative, order that Plaintiff should be allowed to move directly to Execution to obtain the financial portion of the Final Award.

6. No Defendant may transfer, sell, convey, lease, mortgage, or otherwise dispose of any property which may be the subject of execution to satisfy the Arbitration Award which is hereby entered as the Final Award of this Court.

DONE this the 19th day of January, 2021.

Patrick E Kennedy, Circuit Judge

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of Arbitration between	§	
TIMOTHY O. HULSEY, individually and in a Representative capacity as a member of Wynlake Residential Association, Inc.,	§	
Claimant,	§	
vs.	§	
WYNLAKE RESIDENTIAL ASSOCIATION, INC., WYNLAKE DEVELOPMENT, LLC, SERMA HOLDINGS, LLC, BUILDER1.COM, LLC, J. MICHAEL WHITE, SHANDI NICKELL and MARY P. WHITE,	§	**CASE NO. 01-18-0004-0937**
Respondents.	§	

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, has been appointed in accordance with Section 7.10 "Agreement to Arbitrate All Disputes" in The Declaration of Protective Covenants For WYNLAKE SUBDIVISION AS RECORDED IN MAP BOOK 19, PAGE 156 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA and dated and filed October 27, 1995, in Birmingham, Alabama, and on August 26, 2019, at the Final Hearing Claimants represented by John C. Barnes, Esq. and John M. Alford, Esq. and Respondents represented by Christopher McIlwan, Esq., and having been duly sworn, and the Arbitrator having duly heard all of the proofs and allegations of the Parties, hereby AWARDS as follows:

I. BACKGROUND AND ARBITRATION

In 1995, the Wynlake Residential Association, Inc., by and through Incorporator Allen Tamjir, filed a Declaration of Protective Covenants, Articles of Incorporation pursuant to the Alabama Nonprofit Corporation Act (Sections 10-3A-1, et seq.) and Bylaws and thereafter with the Amended and Restated Bylaws, hereby the "Documents", Wynlake Residential Association, Inc. ("HOA") does business as the homeowners association for the Wynlake Residential Subdivision, hereby the "Subdivision".

In 2001, Wynlake Development, LLC ("Wynlake Development" or "Developer") purchased all right, title, interest in and powers appurtenant to the Wynlake name, the Wynlake Residential Subdivision and the HOA. Also transferred was approximately 57 acres for future

development including a lake. Developer still owns 25 lots in the Subdivision and pays no annual or other dues/assessments on these lots.

Builder1.com, LLC was formed on July 16, 1998 (Registered Agent is Serma Holdings) by vote of the HOA's Board of Directors in 2001 and became Manager of the HOA ("Manager"). Manager also sometimes operated under the d/b/a "AKETA".

Serma Holdings, LLC ("Serma") was formed on September 12, 1994 and serves as J. Michael White's personal holding company.

Respondent, J. MICHAEL WHITE ("Mr. White") owns, operates, and controls all the affiliated entities, to wit: the HOA, its Board of Directors (the Board), Wynlake Development, Manager and Serma. Respondents, SHANDI NICKELL, (daughter of Mr. White) and MARY P. WHITE, (wife of Mr. White) became Board members of the HOA at the outset.

Respondent, JIM WHEAT, formerly a member who lived in the Subdivision, was made President of HOA by the Board.

The dispute here goes back many years due to the actions, inactions, and operations of the HOA, under a Board controlled by Mr. White which was in absentia and which lacked transparency. Central to the claims are 1) the HOA's books and records, and transparency, 2) the increased assessments and maintenance, 3) an imposed "ground lease" to use the lake adjacent to the Subdivision and later a Long Term Lease.

Respondents stopped a suit filed by Claimants by invoking mandatory arbitration. Claimant Mr. Hulsey, individually and in a representative capacity, filed a Demand for Arbitration.[1] All Parties are subject to this arbitration and its jurisdiction. The Agreement to Arbitrate All Disputes and the applicability of the Federal Arbitration Act and the Commercial Rules of the American Arbitration Association apply to this arbitration.[2] Alabama substantive

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[1] This dispute was first brought by Claimant in a representative capacity on December 20, 2017 in the Circuit Court of Shelby County, Alabama (58-CV-2017-901186.00), but the Respondents invoked the applicability of the Federal Arbitration Act (9 U.S.C. 1 et. seq.) and binding arbitration clause in the original Declaration of Protective Covenants, the matter went to arbitration for final resolution.

[2] **Agreement to Arbitrate all Disputes. Any and all disputes, disagreements, claims, charges, complaints or other controversy of any kind between an owner and the Developer, the Association, the ARC or any officers, agents, representatives, members and successor and assigns, arising out of or relating to any obligations or dealings between them connected to these covenants, including but not limited to negotiations, communications, representations, disclosures or failures to disclose, contracts, sub-contracts, agreements, warranties, acts, omissions, workmanship, services rendered, materials supplied, and any other obligation or dealing of any kind, before, during or after the date of these covenants, shall be submitted to binding Arbitration at the instance of either party under the arbitration rules of the American Arbitration Association then in effect. The Arbitration will be conducted in Birmingham, Alabama. The law of the State of Alabama shall apply in all Arbitration proceedings. The Arbitration shall be binding upon the parties and judgment upon the award rendered by the Arbitration may be entered in any court having jurisdiction thereof. The Owner, Developer, Association and ARC agree these covenants and all their communications, negotiations, acts, omissions and dealings of any kind involved and concern the construction and maintenance of a residential subdivision and related dealings substantially involve, affect and contemplate substantial interstate commerce, and this is a contract of arbitration under 9 U.S.C. 1, et seq. [Federal Arbitration Act]. The building supplies and materials and possibly labor used in performing the construction and maintenance work will come from outside the State of Alabama, passing in interstate commerce. The parties joining in these covenants acknowledge the mutual benefit of the Arbitration Agreement and desire to have this Arbitration Agreement enforced and abide by all of its terms.**

law applies. After the AAA's arbitrator appointment process, a Preliminary Hearing was held on March 4, 2019 attended by John C. Barnes, Esq. for Claimants and Christopher McIlwain, Esq. for Respondents. Jillian Garrett of AAA also attended and a detailed Report of Preliminary Hearing and Scheduling Order was issued by the Arbitrator including setting the final hearing for June 25 and 26, 2019 in Birmingham.

Claimants have long-complained that Members could not get access to the books and records of the HOA. Claimants' engaged counsel who filed an "official" demand for records on October 2, 2017. While Claimants did get documents from Respondents, at the Preliminary Hearing Claimants complained that the HOA still would not give them needed backup documents to support checks/payments.

Document turnover issues continued and by agreement of counsel the final hearing was rescheduled for August 26 and 27, 2019. Just prior to the rescheduled final hearing an arbitrator status call was held per Claimants' request. Respondents were ordered to turnover specific documents to support checks/payments made by the HOA. More documents were forthcoming before the final hearing.

The final hearing was held on August 26, 2019 in Birmingham with Mr. McIlwan representing all Respondents and Messrs. Barnes and Alford representing Claimants. Neither side wanted a court reporter. Mr. White gave extensive testimony and was the only witness that attended for Respondents. Extensive testimony was given by Mr. Hulsey, and Messrs. Libretto, Young and Blaising, all Members of the HOA and living in the Subdivision. After testimony was completed it was stipulated that the fraud claim and attorney's fee claim would not be pursued by Claimants. Counsel gave summation arguments and both sides acknowledged that all of their proofs had been given. It was agreed that briefs on specific issues would be submitted, which the Arbitrator has received. The hearing and record was closed on September 6, 2019.

II. THE BOOKS, RECORDS, AND TRANSPARENCY

Claimants' witnesses, gave testimony that of the approximately 200 Members of the HOA that 140 Members had contributed financial support (by check) in the bringing of this Arbitration. Counsel for Respondents argued that only 10 Members had completed a form sent around by Claimants. Claimants' witnesses testified that homeowners were too busy or afraid to complete the forms but wanted to show financial support to get relief.

Claimants' testimony was there were no annual or other Member meetings and that at the outset in 2002 the Board had amended – away this requirement in the Bylaws in 2002. The Amended and Restated Bylaws at 2.02 in relevant part states: "… no annual meeting shall be required for so long as Developer is the Owner of any Lot or Dwelling in the Development." This was the method used by Mr. White to insulate against Member transparency and input.

Sections 5.02 and 5.03 of the Bylaws required the HOA to keep detailed books and records and to allow Member inspection as did Section 10A-3-2.32 of Alabama Business and Nonprofit Code.

Claimants' witnesses testified as to the difficulty of getting information or records from the HOA and the Manager, both controlled by Mr. White. None could recall meeting Mr. White who did not live in the Subdivision. The HOA had a post office box and the HOA and Manager's offices were miles from the Subdivision. There was testimony that letters, emails and phone calls from Members were not answered and that information and requests about maintenance, architectural approval, expenses, rising assessments, business records and late fees were ignored on an ongoing basis.

The HOA failed to send out assessment notices on time or on a set schedule. There were instances where Members had not received their assessment notices but then later got a bill that included a late charge. Members' requests about late fees went unanswered, instead when Members sent in checks without the late fee, checks would be returned with a note saying "we do not accept partial payment." One witness said he was not willing to risk a lien, so paid the late fees.

Claimants also had evidence that a) the HOA failed to change its Registered Agent going back to the acquisition in 2001 and the original owner Allen Tajmir (who died in 2012) was still listed in 2017, b) the Board controlled everything and the only HOA Board meetings were annually on Thanksgiving day at Mr. White's house, c) the Presidency of the HOA, Mr. Wheat, who was not present to testify, and "his advisory committee" were illusory and none of Claimants' witnesses remembered ever meeting Mr. Wheat, or d) no witness recalled ever having been invited to a meeting, or even seeing meeting minutes of either a Wheat advisory committee or the Architectural Review Committee ("ARC")[3], e) the several entities, including d/b/a's used by Mr. White were confusing to the Members, f) only after counsel was hired by Claimants did transparency become slightly better, but counsel still did not get needed information, g) neither the HOA nor the Manager properly maintained the common areas and did not monitor the lake for sediment or keep outsiders from fishing the lake, h) the Board in 2014 rejected a bid from a professional management company to manage the HOA because Mr. White thought it would cost slightly more than what the HOA paid his Manager; and i) several Members contacted the Alabama Attorney General's office about the HOA.

Mr. White contested the testimony of Claimants and said that the Board was duly constituted and that the engagement of the Manager was proper under the Documents. As to transparency and Member meetings, Mr. White did not think these were required. He stated that none of the Member requests for information were proper because they had not made "an appointment" as required under the Bylaws. He also stated that he gave homeowners an overview of expenses each year with the notice of assessment. Mr. White stated that the Manager was maintaining books and records and it was maintaining the common areas. Claimants say that it was telling that Mr. White did not have Mr. Wheat or any Member/homeowner testify at the hearing.

To summarize as to books, records, and transparency, Mr. White operated in an insular fashion, without normal interaction with Members. He claimed the Documents allowed this. It

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[3] One member could not get any response to his request about improvements on his property that he thought needed ARC approval.

was clear that the Members had been frustrated for years, including concerns about home values in the Subdivision.

The Documents and the Alabama Business and Nonprofit Code have strict requirements about both maintaining records and making them available. While the Manager did maintain ongoing books and records, it did not keep all records required e.g., advisory or ARC committee minutes.

More importantly however is that the information in the books and records were withheld (even simple information) on an ongoing basis from the Members and even later from Claimants' counsel. This was a breach and violation of the Documents and breach of fiduciary duty under Sections 10A-3-2.32 and 10A-2-8.31 of the Alabama Business and Nonprofit Code by the Board of Directors individually and the Manager.

III. ALLEGED IMPROPER ASSESSMENT INCREASES.

Wynlake Subdivision is still under Developer's control as Developer still owns lots (25) in the Subdivision. Under the Documents, Claimants say there is an ambiguity as to whether HOA Members have to approve increases of the annual assessments. The Declaration says that the annual assessment shall be established by the Association in accordance with its rules, regulations, and Bylaws. Mr. White relies on this, and argues the Bylaws say Members shall approve increases in the annual assessments in excess of the amounts set forth in the Declaration. Claimants assert that the Bylaws give Members approval rights after the HOA Board set the annual assessment of $120 in 2002. Respondents argue that the Declaration controls and Members only had approval rights if there was an increase by the HOA during the year after the assessment had been established, or as to any special assessments.

Claimants say the ambiguity must be construed in favor of the Members and seek repayment of all annual increases above the $120 base year of 2002. The Arbitrator finds that it is very unusual that Members have no input into dues increases, however, the Declaration (§6.04) controls and it says that the annual assessments shall be established by the Association. Even if Claimants succeeded on this claim, which they do not, they would have to deduct the normal increases required to operate each year over the $120 base year. While no award is made to Claimants on this claim, the Arbitrator is not finding that the increased assessments were either reasonable or in good faith. It is important that Members know what their dues are for and there must be a detailed breakdown given to Members not just for example as in 2017 "... $38,400 for grounds/commons/lakes". Going forward there should be an increase in dues because the "ground lease" cannot be assessed.

IV. GROUND LEASE AND LONG TERM LEASE (WITH OPTION TO PURCHASE).

Claimants say the Declaration at §4.24 gave each Member by contract filed in the public record a permanent and perpetual easement for fishing the lake. This easement is further supported by §§4.24 and 4.25.

Beginning in 2002 and each year thereafter the Board at its annual Thanksgiving meeting approved a "ground lease" between the Developer and HOA for the park area and fishing rights in adjacent ponds. There was no underlying written lease, only the minutes and a resolution by the Board. The Members never received meeting minutes and had no input. In 2002 the HOA was charged $1,630, for the lease. The annual ground lease increased each year rising to $14,000 in 2017. There was no evidence that the original Developer charged the HOA for any ground lease and Claimants assert that all Members already had a permanent easement to use the lake for fishing. Claimants are correct that this covert charge by the Board was for their own benefit and violated their fiduciary duty to the Members. Mr. White said the ground lease was needed because the Members benefited and got more than just the right to fish. He recalled that there once had been a picnic/social there.

The ground lease payments for the period 2002 to 2018 totaled $92,130 and each year was paid from the Members' HOA dues. Based on all of the evidence the Arbitrator finds in favor of Claimants and against Respondents on this claim as to recovery of the ground lease payments. Claimants are also correct that any statute of limitations should be declared tolled for the period 2002 through 2018 due to the actions and inactions of Respondents. At the hearing Respondents did not contest, and thereby waived, any argument as to the statute of limitations. Instead Respondents only argued that no recovery should be had on this claim since the Members used and benefited from use of the lake.

There is a further major contention by Claimants that shows Respondents breach of the Documents and breach of their fiduciary duty.

Claimants show that, on October 6th, 2017, at the 2017 Board of Directors Meeting, the "Chairman" (J. Michael White) introduced a Long Term Lease Agreement (with option to purchase) herein the "Long Term Lease" by which the HOA would lease the 57.37 acres at a yearly lease price of $14,000 for the year 2018 and increasing by 12.5% per year until 2032. Mr. White set this Long Term Lease up to be signed by Mr. Wheat as President of the HOA.

Under the Long Term Lease, if the option to purchase was exercised the agreed-upon price would be $23,900 per acre, and increasing at a rate of 4% per annum. This would be more than $1.3 million at the present time. Claimants say this is the same property which is subject to an environmental enforcement action by the ADEM and on which an Administrative Order issued on May 21, 2018 assessing a civil penalty of $50,500. Mr. White testified that this is on appeal and that Developer has no money and that the HOA may have to pay the ADEM fine (from Member dues).

Claimants pointed out the absurdity that under the Long Term Lease the HOA will assume all liability for, and indemnify J. Michael White and Wynlake Development, LLC against any action taken by ADEM.

The Arbitrator agrees with Claimants that this Long Term Lease is clearly contrary to the best interest of the HOA and its Members. The financial terms and the assumption of liability contemplated would impact property values in the Subdivision and impose additional financial obligations on the Members. Claimants are correct that Mr. White, the Developer and the Board

by trying to impose this Long Term Lease upon the HOA and the Members shows a clear breach of each of their fiduciary duty.

To summarize, on the yearly ground lease claim, the Arbitrator finds that Claimants should be awarded the amount of $92,130. Claimants request is granted that this amount shall be paid by Respondents to Timothy O. Hulsey, in constructive trust for Claimants. The Arbitrator was impressed with Mr. Hulsey at the hearing and what he has done for Members. It is clear from the Documents that the HOA and Board Members have D&O insurance (paid for by the Members). This award of $92,130 against Respondents, jointly and severally, is not "to the extent of insurance coverage", so that if for whatever reason the insurance does not cover the award, Respondents, with the exception of Mr. Wheat, shall remain liable until it is paid in full. Further, this awarded amount shall not be paid, in whole or in part, from the Members' dues of the HOA either dues already collected or to be collected.

Based on all of the evidence, the Arbitrator also finds that there shall not be any assessment for, nor shall Member dues be used to: a) pay for any indemnity (e.g., the HOA) that might exist or arise, b) pay for any ADEM penalty or other expenses or charge related to the lake area, c) pay for any increased D&O or similar insurance premiums above the standard rate as of 2016 for the HOA, or Board.

V. DIVESTITURE OF CONTROL OF THE ASSOCIATION.

Members, pursuant to the Declaration, take control of the HOA when Developer owns no lots or dwellings in Wynlake or when Developer voluntarily surrenders control. Developer owns about 25 lots in the Subdivision and owns the 57 acres discussed above. While the Arbitrator agrees with Claimants that the evidence shows that the Board Members, individually, and the affiliate entities owned and controlled by Mr. White have breached and violated the Documents and also breached their fiduciary duties to the HOA and Members, the Arbitrator is reluctant, at this time, to force a turnover of the HOA to the Members. The findings and awards herein hopefully will cause Mr. White, the Board and the Respondent entities to act, going forward, in good faith and in a manner that is transparent and consistent with the rights of the Members. It appears that after the suit was filed Mr. White and the Board were open to having an annual Members meeting and establishing in good faith an advisory committee which would meet and interact with the Board and that both the Member meetings and advisory committee minutes would be included in the Board minutes. It also appears that the Board has appointed Mr. Campbell, a homeowner, to replace Mr. Wheat as President, who has moved away. Further, nothing would preclude the Board from adding someone like Mr. Hulsey to the Board. The Arbitrator's reluctance to grant Claimants' request in this Section V should not be constructed as the Arbitrator's approval of the past operation of the HOA by Mr. White or the Board.

VI. AAA FEES AND EXPENSES.

Pursuant to AAA Commercial Rule R-47(c) the Arbitrator finds that Claimants are entitled to an award of all the arbitration fees and expenses including Arbitrator compensation (but not attorneys' fees) and that all such fees and expenses as set out below in the award are assessed against Respondents, jointly and severally.

VII. TERMS OF AWARD.

Based on all of the evidence, arguments and submittals presented, (even if not mentioned or addressed in this Award), and the Arbitrator having given to the evidence, the weight that he deems appropriate under the circumstances, and the Arbitrator's foregoing findings being incorporated herein and pursuant to AAA Commercial Rule R-47 the following Award is made:

A) Claimants Timothy O. Hulsey, individually and in a Representative capacity as a member of Wynlake Residential Association, Inc., are awarded pursuant to foregoing Section IV the amount of $92,130 against Respondents, Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White, jointly and severally (with the exception of Respondent Jim Wheat, against whom there is no award of any kind) and such amount shall be paid to Timothy O. Hulsey, Trustee for the Members of Wynlake Residential Association, Inc. No pre-award interest is awarded.

B) The awarded amount including amounts set out below in Section VII (E) shall be paid within thirty (30) days of the Final Award by Respondents, Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White, jointly and severally to Timothy O. Hulsey, Trustee for the Members of Wynlake Residential Association, Inc., to be held by him in constructive trust to be used and distributed by Mr. Hulsey as he deems proper for Members' use and benefit, including payment of counsel.

C) Awarded amounts not made when due shall bear post-award interest at 10% per annum until paid by Respondents, Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White.

D) No attorneys' fees are awarded.

E) The administrative fees the AAA totaling $6,250.00 shall be borne jointly and severally by Respondents Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White. The compensation and expenses of the Arbitrator totaling $13,466.19 shall also be borne jointly and severally by Respondents, Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White. Therefore, Respondents, Wynlake Residential Association, Inc., Wynlake Development, LLC, Serma Holdings, LLC, Builder1.com, LLC, J. Michael White, Shandi Nickell, and Mary P. White, shall jointly and severally reimburse Claimant, Timothy O. Hulsey an amount of $12,983.09 representing the portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimants Timothy O. Hulsey, individually and in a Representative capacity as a member of Wynlake Residential Association, Inc., upon demonstration by Claimants that theses incurred costs have been paid.

F) This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

SO AWARDED, this 4th day of October, 2019, by the undersigned Arbitrator.

I, William F. Welch do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed the foregoing instrument, which is my Final Award.

Oct 4th '19
Date

William F. Welch, Arbitrator

From: **Bill Welch** bwelch@merrittwatson.com
Subject: Re: Timothy O. Hulsey, individually v. Wynlake Residential Association, Inc., - Case 01-18-0004-0937
Date: October 7, 2019 at 1:43 PM
To: JillianGarrett@adr.org
Cc: jcb@alfordbarnes.com, cmcilwain@hubbardfirm.com, Jackie Rios jrios@merrittwatson.com, jma@alfordbarnes.com, jimhill@stclairlawgroup.com, mcl@fwd7.exghost.com

Dear All,
After the Award went out on Friday, on my own I discovered that I overlooked a typographical error.
In Section III, last sentence, on page 5 of the Award the word "not" was omitted and should read "Going forward there should not be an increase in dues because the "ground lease" cannot be assessed".
Under AAA Rule 50 any party may seek to correct a typographical error.
Kind regards
Bill Welch
Arbitrator

Sent from my iPad

> On Oct 4, 2019, at 12:20 PM, "JillianGarrett@adr.org" <JillianGarrett@adr.org> wrote:
>
> Hello,
>
> Please review the attached correspondence regarding the above-referenced case.
>
> Feel free to contact me with any questions, comments or concerns you have related to this matter.
>
> Thank you.
>
> [Logo]
> AAA Jillian Garrett
> Manager of ADR Services
> American Arbitration Association
>
> T: 404 320 5103 F: 877 395 1388 E: JillianGarrett@adr.org<mailto:JillianGarrett@adr.org>
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> [cid:image81ee81.JPG@ac480fe2.448202c0]
>
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