

Jonathan Zachem, Secretary

Rick Scott, Governor

March 13, 2018

VIA EMAIL: managerbcma@gmail.com
VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED:
Certified Number: 7007 0220 0000 0198 3702

Bayshore Club Management Association, Inc.
Julienne Messmer, Registered Agent
925 N. Halifax Avenue 201 S
Daytona Beach, FL 32118

Re: Bayshore Club Management Association, Inc.
Case 2017039584

Dear Mrs. Messmer and Members of the Board of Directors:

The Division of Florida Condominiums, Timeshares and Mobile Homes is the state agency charged with the administration of Chapter 718, Florida Statutes (the Condominium Act) and the related administrative rules promulgated thereunder. The division has completed its investigation concerning division case number 2017039584. The division's findings and proposed resolution have been detailed in the attached Consent Order.

Based upon the evidentiary information obtained, the division finds that the Association is in violation of Chapter 718, Florida Statutes, and the administrative rules promulgated thereunder. Pursuant to section 718.501(1)(d)6., Florida Statutes, and rule 61B-21.003, Florida Administrative Code, the division is required to resolve the current violation through an administrative enforcement action.

The division is prepared to settle this matter by way of Consent Order. A Consent Order eliminates the need for additional administrative or legal proceedings. By signing and accepting the Consent Order, the Association admits to the violation and agrees to undertake the remedial actions detailed in the attached Consent Order. The Association, by entering into this settlement, waives any right to dispute or contest the violation described.

In order to confirm this settlement, please return a signed copy of the attached Consent Agreement by mail to:

Department of Business and Professional Regulation
Division of Condominiums, Timeshares, and Mobile Homes
Attn: Holly Cochran Gressel
2601 Blair Stone Road
Tallahassee, Florida 32399-1030

The signed Consent Order and the required civil penalty must be received by the division within 21 days of the date of this letter. Administrative or legal proceedings may be initiated if a timely

Bayshore Club Management Association, Inc.
Case No: 2017039584

response to this letter is not received by the deadline provided. Please note that section 718.501(1)(d), Florida Statutes, provides for the levying of civil penalties up to \$5,000.00 for each violation of the Condominium Act and related rules under the Florida Administrative Code.

Thank you for your anticipated cooperation in this matter.

Sincerely,

BUREAU OF COMPLIANCE

A handwritten signature in cursive script, appearing to read "Holly Cochran Gressel".

Holly Cochran Gressel
Financial Examiner/Analyst II

**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. 2017039584

Bayshore Club Management Association, Inc.

Respondent.

CONSENT ORDER

Petitioner, the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), and the Bayshore Club Management Association, Inc. (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 defined by section 120.52, Florida Statutes, statutorily responsible for the 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 case number 2017039584.
3. Respondent desires to resolve this investigation without formal administrative or judicial proceedings that 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 years in which the violations 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. Bayshore Club Management Association, Inc. is a "residential condominium," as defined in section 718.103(23), Florida Statutes, containing 213 residential units and located in Daytona Beach, Florida.
7. Bayshore Club Management Association, Inc. is the condominium "association" as defined in section 718.103(2), Florida Statutes, that operates Bayshore Club Management Association, Inc.
8. Respondent's fiscal year ends on December 31st.
9. Respondent used reserve funds to fund an item outside of its intended purpose, in violation of 718.112(2)(f)3, Florida Statutes. Specifically, the board of directors borrowed \$131,430.48 from the painting reserve account to fund structural repairs made to the common elements of the association without prior approval from the unit owners.

10. CONCLUSIONS OF LAW

11. 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.
12. Respondent used reserve funds to fund an item outside of its intended purpose, in violation of Section 718.112(2)(f)3., Florida Statutes.

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

AGREEMENT

14. Civil Penalty and other relief:

- a) Respondent shall remit to the Division a civil penalty in the amount of three thousand five hundred seventy eight dollars and forty cents. (\$3,578.40) 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 on the condominium property or where notice for meetings is 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. Respondent shall, within forty-five (45) days after receipt of this Consent Order, as signed by both parties, provide the Division with evidence of compliance with this requirement by means of an affidavit signed by the responsible party attesting to the posting of the Consent Order on the condominium property.
- 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.

15. **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.

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

17. **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.

18. **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 that 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.

19. **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.

20. **Releases.** Respondent waives, releases and forever discharges the Division and its employees, agents, and representatives from any and all causes of action in law or in equity, which Respondent may have 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.

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

22. **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.

23. **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, BAYSHORE CLUB MANAGEMENT ASSOCIATION, INC., by its duly authorized representative, _____, pursuant to the following certified resolution agrees to the terms, conditions and issuance of this Consent Order on this _____ day of _____, 2018.

Signature

Print Name

Title

State of _____
County of _____

THE FOREGOING INSTRUMENT, CONSENT ORDER, WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2018 BY _____ WHO PRODUCED IDENTIFICATION IN THE FORM OF _____ 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)

_____, Notary Public

State of Florida.
My Commission Expires:

DONE AND ORDERED in Tallahassee, Leon County, Florida this _____ day of _____, 2018.

Kevin Stanfield, 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:
Bayshore Club Management Association, Inc.
Julienne Messmer, Registered Agent for the Association
925 N. Halifax Avenue
201 S
Daytona Beach, FL 32118, this _____ day of _____, 2018.

AGENCY CLERK'S OFFICE

Copies furnished to:

Holly Cochran Gressel
Financial Examiner/Analyst II
Bureau of Compliance
2601 Blairstone Road
Tallahassee, FL 32399