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

Filed with
Arbitration Section

APR 22 2014

Div. of FL Condos, Timeshares & MH
Dept. of Business & Professional Reg.

IN RE: PETITION FOR ARBITRATION HOA

COCO WOOD LAKES ASSOCIATION, INC.,

Petitioner,

v. **Case No. 2013-04-9976**

HOMEOWNERS VOTING FOR RECALL[1]

Respondents.
______________________________________/

ORDER AFTER CASE MANAGEMENT CONFERENCES

Telephonic case management conferences were held in this matter at 10:00 a.m. on April 10, 2014 and at 3:30 p.m. on April 11, 2014 and both parties were represented. This matter arose from the filing of a petition for recall arbitration filed by Coco Wood Lakes Association, Inc. (the Association). The following order is being issued:

1. It had recently come to the attention of the undersigned and counsel for the Association that Mr. Whitlock, the representative of the homeowners voting for recall, was not a member of the Association. As such, he was not properly before the arbitrator without having applied for and been accepted by the arbitrator as a qualified representative for the homeowners. Mr. Whitlock has lived for the prior 13 months with a person who is a member of the Association and on April 10, 2014, the arbitrator placed him under oath and queried him regarding his qualifications to represent the unit owners.

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[1] Case style is changed to reflect the proper parties in a homeowners' association recall.

2. Pursuant to the criteria set forth in Rule 61B-80.107, Florida Administrative Code, the arbitrator qualified Mr. Whitlock as representative for the unit owners, *nunc pro tunc,* to December 20, 2013, based upon the pleadings he had filed, his prior participation with adversarial actions taken by members of a community association where he does own a unit, and his statement that he is generally familiar with the statutes related to the operation of community associations. Mr. Whitlock was cautioned however, that his qualification in these proceedings could be revoked, and he is not guaranteed similar treatment if he is selected as representative of members of the Association in a petition for election dispute arbitration; in which case he will have to re-qualify.

3. At 5:24 a.m. and 8:38 a.m. on the morning of the April 10, 2014 conference, Respondents through Terry Whitlock, filed a 21 page pleading and a four-page pleading respectively. The earlier pleading was a "Status Report on the Outcome and Conduct of the Election and Supplement to Respondents' Motion For Injunctive Relief." The later of the two pleadings was a "Memorandum of Law and Facts". These pleadings were not authorized or requested by the arbitrator; the Association had no time to respond to either the status report or the memorandum of law; and neither the arbitrator nor the Association had time to properly review the filings prior to the start of the conference. Therefore, both of these pleadings are stricken.

4. On April 11, 2014, at 4:19 a.m., prior to the second case management conference scheduled for later this day at 3:30 p.m., Mr. Whitlock faxed to the arbitrator a pleading called "Response to Arbitrator's Question FOR TELECONFERENCE TODAY, APRIL 11, 2014". Also on April 11, 2014 at 6:57 a.m., Mr. Whitlock faxed to the arbitrator a 5 page document he titled, "Memorandum of Law for TELECONFERENCE TODAY, APRIL 11,

2014". Later on April 11, 2014, at 1:54 p.m., Mr. Whitlock again communicated with the arbitration section by sending an email to the arbitrator which purported to be an audio copy of the annual meeting and election held by the Association on April 7, 2014[which intervened during the pendency of the recall arbitration]. All of these pleadings will be stricken because they were irrelevant to the current issue, and again, there was no authorization for the filing of this audio recording; there was no time for the Association to respond in writing to the filing; nor time for the arbitrator or the Association to review the filing and prepare for the conference scheduled for an hour-and-a half later.

5. On the morning of April 14, 2014, Mr. Whitlock, despite being told on April 11, 2014, during the second case management conference not to file any more pleadings which were not ordered or authorized by the arbitrator, nonetheless did so. Mr. Whitlock filed on April 13, 2014 at 8:38 p.m. (Sunday) and on April 14, 2014 at 1:17 a.m., pleadings entitled, "Objection to Petitioner's Notice of Intervening Election Rendering Recall Moot and Supporting Memorandum of Law" and "Clarification of Respondent's Answer to Recall Petition". This was in direct contravention of the arbitrator's order to Mr. Whitlock to await an order from the arbitrator before filing any further pleadings. Again, the pleadings were not authorized nor ordered by the arbitrator, were unnecessary, extraneous and did not allow for time for the Association to respond to either. These pleadings are also by this order, being stricken.

6. The recall arbitration is moot due to an intervening election only as to board member Sandy Steinberg, who was a target of the recall attempt but was re-elected to the board at the April 7, 2014 annual election. Board members Jerry Zaslow and Gail Johnson also subject to the recall, but not up for election resigned after the April 7, 2014

election. However, their resignations do not moot the recall as to their seats. Rule 61B-81.003(5)(b) Florida Administrative Code (2013), provides: "Where the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision."

7. Contrary to the arbitrator's statement at the conference that Respondents might be able to reuse their ballots in a second recall attempt, they may not do so. A written recall ballot expires 120 days after it is signed by a homeowner. Rule 61B-81.003(1)(i), Florida Administrative Code. The written recall agreement was served on the board on November 25, 2013, so every valid homeowner signature casting a ballot for recall had to have been dated November 25, 2013 or earlier. There have passed 158 days since service of the recall. *Marbella Park West HOA, Inc. v. Homeowners Voting for Recall,* 2011-00-3898, Summary Final Order (February 11, 2011).

8. FINALLY, MR. WHITLOCK IS ORDERED NOT TO FILE ANY RESPONSE TO THIS ORDER; NOT TO FILE ANY FUTURE PLEADINGS WHICH HAVE NOT BEEN REQUESTED OR AUTHORIZED BY THE ARBITRATOR; OR RISK THE IMPOSITION OF SANCTIONS AS AUTHORIZED BY RULE 61B-80.116, FLORIDA ADMINISTRATIVE CODE, INCLUDING MR. WHITLOCK'S DISQUALIFICATION AS THE HOMEOWNERS' REPRESENTATIVE OR THE STRIKING OF RESPONDENTS' ANSWER AND ENTERING A FINAL ORDER AFFIRMING THE ASSOCIATION'S FAILURE TO CERTIFY THE RECALL.[2]

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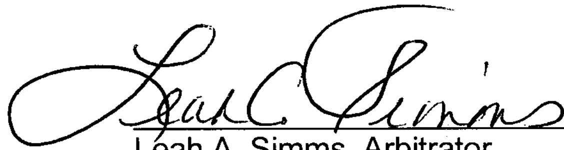
[2] See *Whisper Walk Section E Association, Inc. v. Wigdor*, Arb. Case No. 02-5393, Order Creating Moratorium on Further Pleadings (January 30, 2003).

DONE AND ORDERED this 22nd day of April, 2014, at Tallahassee, Leon County, Florida.[3]



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[3] Respondents are cautioned that initiation of an arbitration election dispute case pursuant to section 718.1255(1), Florida Statutes, based solely on the date the annual meeting was held, is insufficient to sustain the allegation that that the April 7, 2014, election was a sham. *Riviera Villas Condominium Association v. Unit Owners Voting for Recall*, Arb. Case No. 2003-04-5722, Final Order Dismissing Petition for Recall Arbitration April 22, 2003). A sham election is one which is designed to forestall a recall effort. *1500 Coral Towers Condominium Association, Inc. v. Unit Owners Voting for Recall*, 2011-05-4925, Final Order Dismissing the Petition as Moot (February 10, 2012). Here, the election date was delayed pursuant to Mr. Whitlock's complaint that the Association committed procedural errors in their conduct of pre-election formalities prior to the election which was originally scheduled for February 12, 2014.