

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

IN RE: PETITION FOR ARBITRATION-HOA ELECTION

MARTIN NEGRON,

Petitioner,

Filed with
Arbitration Section

v.

Case No. 2017-01-1731

**ASSOCIATION OF POINCIANA
VILLAGES, INC.,**

JUN 23 2017

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

Respondent.

SUMMARY FINAL ORDER

Statement of the Issues

Did the Association of Poinciana Villages, Inc. (the Association), who conducts the elections for eight of its sub-associations, improperly credit an owner of undeveloped and unplatted land with votes it was not entitled to cast at the February 14, 2017 election?

Relevant Procedural History

On March 1, 2017, Petitioner filed a mandatory binding arbitration petition for a homeowners' association election dispute. The petition alleges that the Association permitted an owner of undeveloped and unplatted land to cast more votes than it was entitled to cast under the respective sub-associations' governing documents at the February 14, 2017 annual election. On May 17, 2017, the Association filed an answer. On June 5, 2017, Petitioner filed a reply. This Summary Final Order is based on the pleadings and exhibits filed by the parties.

Findings of Fact

1. The Association of Poinciana Villages, Inc. is the legal entity responsible for the maintenance and operation of the master association of the Poinciana Villages community. This large community spans across Polk and Osceola counties.

2. The Association is comprised of nine individual sub-associations called Villages.

3. Petitioner is a member of the Association and one of the sub-associations, Poinciana Village Seven Association, Inc. (Village Seven).

4. The board of directors of the Association is comprised of one representative from each of the sub-associations' board of directors.

5. Villages One through Eight of the sub-Associations have adopted the "Association of Poinciana Villages Election Procedures for Village Elections" (Uniform Procedures), where stated purpose is to establish uniform election procedures for Villages One through Eight.

6. Article IV of the Uniform Procedures provides:

IV. VOTER ELIGIBILITY: Every person, corporation, trust or other entity that is an owner of record of any property in any Poinciana Villages shall be a voting member of that Village. However, only one (1) vote may be cast per lot/tract/parcel owned regardless of the number of persons or entities reflected on the deed as owners. In addition, any person who permanently resides in and who physically maintains possession of any Lot in Villages One through Eight and who is also qualified to vote in any public election shall also have the right to be a voting member provided that said person has duly registered for such purpose with the Registrar. To register, a non-owner permanent resident in possession of a Lot must present to the Registrar a valid voter's registration I.D. card issued by the Supervisor of Elections and a written statement, signed by the property owner of record and notarized, stating that the person seeking registration meets the requirements of this paragraph and is designated by the Lot Owner to cast the sole vote on behalf of the Lot. For purposes of this paragraph, the owner of record shall be the person who appears on the APV's database

(membership records) as the owner. Any person who claims ownership different than [sic] that reflected on the APV's database must show by conclusive evidence that they are, in fact, the bona tide record title owner at or before seeking registration per paragraph VI below. A deed recorded in the public records of the County in which the property is located identifying the person as the current record title owner shall constitute conclusive evidence of ownership.

(emphasis supplied).

7. Article V of the Uniform Procedures provides:

V. CORPORATE OWNER VOTERS (Including But Not Limited to Developer and Bulk Land Owners): To be eligible to vote, corporate and other business entity owners of record are responsible to provide:

a. The Registrar of the APV with a notarized document from an officer or director stating the name(s) of individual(s) who are authorized to vote on its behalf in any meetings of the Association of Poinciana Villages, Inc., and various Village Associations in Poinciana.

b. The Registrar of the APV with the total votes by Village being cast on behalf of the corporation or other business entity.

c. A list, by name, of those individuals representing the corporation or other business entity who may serve on any Village Board of Directors for which corporation or business entity owns any property. All such individuals must meet the eligibility requirements of II(a)(ii) above to serve on a Village Board of Directors.

d. All information as described in items a-c above must be received by the APV Registrar by no later than the second Friday (no later than 4:00 p.m.) of the December of the year preceding the year when the election will take place in order for an individual representing a corporation or other business entity to be elected to their Village Board of Directors at the annual election meeting. Information received after the deadline will not be accepted.

(emphasis supplied).

8. Article VI of the Uniform Procedures provides:

VI. ELECTION DAY PROCEDURES: Elections for Directorships in Villages One through Eight will take place on the second Tuesday in February each year. Voting shall take place at the Poinciana Community Center, located at 395 Marigold Avenue, Poinciana, FL 34759, or any other location authorized

by the APV, and eligible owners shall have the opportunity to vote from 7:00 a.m. to 7:00 p.m. Eastern Standard Time.

a. All Eligible voters must register to vote with the APV Registrar at the location and voting schedule indicated above. To be registered, voters must present a valid government issued photo I.D., e.g. driver's license, passport, or state issued I.D. Identification without a photo is insufficient.

b. The Registrar will provide each eligible voter with the necessary ballot(s) indicating those candidates running for the expiring terms of the Village(s) in which they are authorized to vote.

c. Casting Ballots: All ballots must be immediately cast in the election ballot box provided.

d. Election Results: Election results will be posted with the winners names at the Entrance of Administration Office and the Entrance of the Community Center building.

e. The Manager or Registrar will attempt to contact each candidate via the telephone number provided by the candidate at the conclusion of the elections to advise them of whether they won their respective election.

(emphasis supplied).

9. Article VI, Section 4, of each of the Articles of Incorporation for Villages One through Eight provides:

(4) Avatar Properties Inc., as developer of Poinciana Subdivision, shall be a member of this Association and it shall have voting rights equivalent to the number of lots and property it owns in this Village [number] during all the time that it retains legal title ownership therein. For undeveloped portions of Village [number] which are not platted as lots, the owner of such unplatted land shall be entitled to one (1) vote for each Home which may be constructed on such land pursuant to applicable law. For purposes of this Article VI, "Home" shall mean a residential home and appurtenances thereto constructed on a lot within this Village [number]. A Home shall include, without limitation, a town home, a condominium unit, a patio home, a zero lot line home, each residential apartment within a Multi-Family Dwelling Building, and a single family detached estate home. The term Home may not reflect the same division of property as reflected on a plat. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home.

(emphasis supplied).

10. On February 14, 2017, the Association held an election for eight of the sub-associations. Petitioner is challenging the results for Villages One, Two, Three, Five, Seven and Eight.

11. For the February 14, 2017 Election, the Register of the Association credited Avatar Properties, Inc. (Avatar) with multiple votes for individual undeveloped unplatted lots. The Registrar determined the number of votes granted to Avatar per undeveloped unplatted lot by the maximum density permitted as described by a Binding Letter of Interpretation of Vested Rights Status issued by the Florida Department of Community Affairs dated May 17, 1983 (Vested Rights Letter). The Vested Rights Letter provides, in pertinent part:

1. The proposed Poinciana development, providing the scope of development described in Attachment A on 47,000 acres, has acquired vested rights and will not be required to comply with the review requirements of Section 380.06, Florida Statutes.
2. Any proposal by the applicant to develop beyond the parameters described in Attachment A, has not acquired vested rights.
3. Proposed changes to this vested DRI may require further review pursuant to Subsections 380.06(4)(b) and (c), Florida Statutes.

This binding letter of interpretation has been issued pursuant to the procedural requirements of Subsection 120.57(2), Florida Statutes, and constitutes final agency action appealable within 30 days to a District Court of Appeal pursuant to Section 120.68, Florida Statutes. If you wish to present oral or written evidence, or a written statement in opposition to this agency action, you must file with the Division a written request for an opportunity to do so within 30 days from this date. Such a request for a reconsideration shall be made in accordance with Section 9B-16.14-16, Florida Administrative Code, and will be responded to by the Division pursuant to Subsection 120.57(2)(a), Florida Statutes.

This determination does not obviate the need to comply with other applicable state or local permitting procedures.

(emphasis supplied).

12. A review of each of the respective county's property appraiser's property reports on Avatar's parcels, which was provided by the Association, shows a significant number of acres are submerged land, marshland, land bordering a large body of water, unusual shaped parcels and single parcels separated by other parcels and roads.

Conclusions of Law

Sections 720.306 and 720.311, Florida Statutes, provide that the Department shall conduct mandatory binding arbitration of election disputes between a member and a homeowners' association. Because there is no issue of material fact in dispute after the filings provided to date by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-80.114, Florida Administrative Code.

Affirmative Defenses

The Association has asserted several affirmative defenses. The first affirmative defense is failure to join indispensable parties. The Association avers that the individual sub-Associations for Villages One, Two, Three, Five, Seven and Eight must be joined as the petition concerns the election of their boards of directors. However, all these sub-Associations have appointed the Association to run their elections. The discretion on how many votes an owner receives is vested solely with the Association.

The Registrar, who is an official of the Association, is basically the supervisor of elections for this large development. Like a county's supervisor of elections, the Registrar determines candidate and voter eligibility. The Registrar's decision to allow Avatar to have multiple ballots for several of its parcels is the challenged action. A voter challenging a Supervisor of Election's decision on voter eligibility does not need to join the federal government, state government, local governments and special districts. Similarly, the

Association is the only necessary party in the instant case. Therefore, the Association's First Affirmative Defense is DENIED.

The Association's second and third affirmative defenses are failure to provide pre-arbitration notice to the sub-Associations and the Association. As the sub-Associations are not necessary parties, it was unnecessary for Petitioner to provide pre-arbitration notice to them.

According to Section 720.311, Florida Statutes, mandatory binding arbitration of election disputes in homeowners' associations is conducted pursuant to Section 718.1255, Florida Statutes. Section 718.1255(4)(b), Florida Statutes, requires that the petition recite and have attached thereto, supporting proof that the petitioner gave the respondent:

1. Advance written notice of the specific nature of the dispute;
2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Section 718.1255(4)(b), Florida Statutes, further provides that failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

As pre-arbitration notice, Petitioner filed a letter dated February 17, 2017. The letter does not state when the Association must complete Petitioner's demand for relief. Pre-arbitration notice is not a perfunctory requirement; it is designed to allow a respondent a reasonable opportunity to agree to the relief requested without a formal legal proceeding, and pre-arbitration notice cannot be accomplished after the petition has been filed. *Alvarez v. Doral Isles Cmty. Ass'n, Inc.*, Arb. Case No. 2014-03-2036,

Final Order of Dismissal (Sept. 19, 2014). However, the Association did respond in a letter dated February 27, 2017, and made it clear that it did not agree with Petitioner's position on how many votes Avatar should have been able to cast. Therefore, the dispute would not be resolved no matter how long Petitioner gave the Association to comply. Therefore, the Association's Second and Third Affirmative Defenses are DENIED.

The Association's fourth affirmative defense is lack of jurisdiction over the subject matter. Petitioner's request for relief includes a request to ban Avatar's representatives from serving on the sub-Association boards or the Association's boards unless the other members of the associations elect them and a request that Avatar be forced to pay assessments per a 1985 Agreement before allowing it to vote. The petition has not provided any facts that Avatar's representatives are ineligible to serve, therefore this request for relief is DENIED. Additionally, the request for payment of assessments is DENIED, as the arbitrator does not have jurisdiction over assessments pursuant Section 718.1255, Florida Statutes.

The Association's fifth affirmative defense is that Section 720.307, Florida Statutes, which prescribes turnover requirements for homeowners associations, does not apply to the Association. Section 720.307(5), Florida Statutes, states that this section does not apply to a homeowners association in existence before 1995. The Association existed before 1995, therefore Section 720.307, Florida Statutes, does not apply to the Association and any claims related to Section 720.307 are DENIED.

The Association's sixth affirmative defense is that Petitioner failed to attach all relevant governing documents. Even if Petitioner failed to provide all the documents, it

was harmless error as the Association is the custodian of the Association's governing documents and therefore can correct the record. Therefore, the Association's sixth affirmative defense is DENIED.

Calculation of the Number of Votes Avatar is Entitled to Cast

Under the Uniform Procedures, the Registrar is tasked with determining voting eligibility and the number of ballots Avatar is entitled to cast under the governing documents of the sub-association. The Registrar calculated the number of votes Avatar was entitled to cast by using the maximum density permitted in the Vested Rights Letter. However, the Association's inquiry should have started with the Vested Rights Letter, not ended with it. The letter itself states that Avatar did not have to complete a Development of Regional Impact Plan under Section 380.06, Florida Statutes, but it was still required to comply with other state and local laws and regulations.

Under the governing documents of the sub-associations, for "undeveloped portions of Village [number] which are not platted as lots, the owner of such unplatted land shall be entitled to one (1) vote for each Home which may be constructed on such land pursuant to applicable law." Before even looking at the state and local regulations, the Registrar needed to determine if the parcel could physically accommodate the maximum density allowed under the Vested Rights Letter. For instance, if a parcel was 100 acres and the maximum density was 4 units per acre, the Registrar would have to determine if the parcel was in such a shape that it could be cut into 400 lots. There would have to be allowance for roads and other infrastructure needs and environmental protected areas.

Avatar would have to provide proof that under federal law, state law and Osceola and Polk County codes that lots are even buildable. The governing documents, themselves have restrictions on set-backs, minimum floor areas and other restrictions that may affect how many homes may be built on a particular parcel. What the Association or Avatar envisions for the future is irrelevant. *OPO, LLC. v. Walton Plantation Master Ass'n, Inc.*, Arb. Case No. 2013-01-8611, Summary Final Order (October 17, 2013). Avatar may not maintain control of the sub-Associations and thereby the Association in perpetuity by an imaginary regulatory scheme where maximum density is the only law applicable to building a home. *Id.*

As the Registrar and the Association allowed Avatar to vote more than one vote per parcel without definitive proof of how many homes it could actually build on that parcel under all applicable laws and regulations, the Association has improperly diluted the votes of other members of all the associations. Therefore, a new election must be ordered for Villages One, Two, Three, Five, Seven and Eight.

Based upon the foregoing, it is **ORDERED**:

1. Petitioners' requested for relief is **GRANTED, in part.**
2. The results of the February 14, 2017 election for Villages One, Two, Three, Five, Seven and Eight are void and the holders of the five director seats are those who occupied the seats immediately before the February 14, 2017 annual meeting and election, assuming they are otherwise qualified and wish to continue to serve.
3. Consistent with the requirements in this Order as set forth above, the Association, no later than August 1, 2017, shall hold a new election for Villages One,

Two, Three, Five, Seven and Eight. After the election, the individual Villages will choose their representative to the board for the Association.

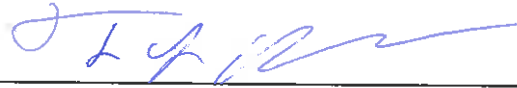
4. The owner of an undeveloped and unplatted parcel must provide definitive proof from relevant governmental entities on how many homes it may actually, legally build on the parcel before being given more than one vote per parcel.

5. The Association shall mail the Notice of Election consistent with the Uniform Procedures and the sub-associations' governing documents, providing adequate notice thereunder to meet the August 1, 2017 or earlier election date.¹

6. The Notice of Election shall include the following statement which shall be printed in bold, all capital letters, 12 point font size, in a format identical to the following:
IN ORDER TO COMPLY WITH THE JUNE 23, 2017, SUMMARY FINAL ORDER, CASE NO. 2017-01-1731, ENTERED BY THE ARBITRATION SECTION OF THE DIVISION OF CONDOMINIUMS, TIMESHARES AND MOBILE HOMES, FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, A NEW ELECTION TO REMEDY DEFECTS IN THE FEBRUARY 14, 2017 ELECTION PROCESS MUST BE HELD COMMENCING WITH THE ENCLOSED NOTICE OF ELECTION. A COPY OF THE SUMMARY FINAL ORDER MAY BE OBTAINED FROM THE ASSOCIATION OR BY CALLING 850-414-6867.

¹ Section 720.306(5), Florida Statutes requires a minimum of 14 days-notice for a member meeting.

DONE AND ORDERED this 23rd day of June, 2017, at Tallahassee, Leon County,
Florida.



Terri Leigh Jones, Arbitrator
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Professional Regulation
Arbitration Section
2601 Blair Stone Road
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Tele: (850) 414-6867 / Fax: (850) 487-0870

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail and email to the following persons on this 23rd day of June, 2017:

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Terri Leigh Jones, Arbitrator