

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

**IN RE: PETITION FOR ARBITRATION**

**MARK STERN,  
Petitioner,**

**v.**

**Case No. 2007-06-6957**

**PLAYA DEL MAR ASSOCIATION, INC.,  
Respondent.**

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**ORDER**

Petitioner has filed a petition alleging that he was improperly removed from the Association's board of directors by means of a defective recall procedure. A case management conference was held on January 24, 2008, during which the undersigned found that this matter should proceed forward and that Petitioner would have to establish why the recall should be found defective, that is, if the Association had properly considered the recall, the recall should have been rejected.

**Discovery**

During the case management conference Petitioner was granted leave to engage in discovery. On April 25, 2008, the Association filed notice that it has not received a discovery request from Petitioner. **Petitioner shall have fourteen days from the date of this order to serve the Association with a discovery request. The Association shall have fourteen days to respond to the discovery request.**

**Amended Petition**

During the case management conference the undersigned concluded that

**Petitioner needed to amend his petition to state each specific basis for rejecting the recall. Petitioner shall file the amended petition within fourteen days of receipt of the Association's response to Petitioner's discovery request. The Association shall have ten days from its receipt the amended petition to file an answer.**

### **Standing**

**On March 3, 2008, the Association filed a Preliminary Motion to Determine Standing of Petitioner. On March 27, 2008, Petitioner filed a response to the motion. The Association filed reply to the response on April 27, 2008.**

**The Association argues that Petitioner lacks standing to bring this action since he does not own a unit and, therefore, is not a member of the Association. Petitioner contends that he should be deemed a member of the Association because he is the beneficiary of the trust that owns the unit in which he resides.**

**In support his position, Petitioner offers a quitclaim deed dated March 1, 2003, by which Beverly Kohn retained a 99% interest in unit 1401 at the condominium (the unit) and transferred a 1% interest in the unit to Petitioner (Kohn/Stern quitclaim deed). The Association has filed a copy of a quitclaim deed dated February 27, 2003, and recorded March 21, 2003 (Kohn Quitclaim Deed), by which Beverly Kohn and Petitioner transfer a 99% and 1% interest in the unit, respectively, to Beverly Kohn. The Association states that the above referenced Kohn/Stern quitclaim deed was never recorded.**

**Petitioner also has filed a Residence Trust Agreement dated February 21, 2007, and First Amendment to Residence Trust Agreement Dated February 21,**

2007 which is dated October 29, 2007, relating to the unit.

The trust agreement provides that Beverly Kohn, as grantor, conveys the unit to the Trustee. The trust agreement designates Mark S. Stern as the trustee. The trust provides that Petitioner and Beverly Kohn shall be entitled to the use and occupancy of the unit for his life, and shall have sufficient title to claim homestead exemption. The trust further provides that Petitioner may sell the property and purchase replacement property. Under the trust, while either of them occupy the unit, they are responsible for the upkeep and maintenance of the property. Upon the death of Ms. Kohn, the property shall be distributed to Larry Stern, if living, otherwise to Sheri Stern and the Children of Mark Stern. However, if, at Petitioner's death, Petitioner and Ms. Kohn are not residing together on the property, the property shall be distributed to Larry Stern, if living, otherwise, to Sherri Stern and the Children of Mark Stern.

The Association has filed a copy of a warranty deed dated February 21, 2007 (the February Warranty 2007 deed), which was recorded on February 22, 2007, by which Beverly Kohn transferred the unit to Petitioner as Trustee of the Residence Trust, dated February 21, 2007 (Trust Deed).

Pursuant to section 1 of the Article VI of the Association's Articles of Incorporation the owners of all apartments in the condominium are members of the Association. Section 1 of Article VI of the Association's Articles of Incorporation provides membership shall be established by acquisition of fee title to an apartment by acquisition of a fee ownership interest therein, whether by conveyance, devise, judicial decree, or otherwise.

As trustee of the trust that currently owns the unit, Petitioner is eligible to serve on the Association's board of directors. See *McWilliam v. Maya Marca Condo. Ass'n, Inc.*, Arb. Case No. 2003-09-4468, Amended Summary Final Order (April 12, 2004)(Where an association's by-laws provide that a board member must be the owner of a unit, "have an interest therein" or be an officer or designated agent of an owner corporation, it is reasonable to interpret this language to apply to current, legal interests, such as trustees or life estate holders.); see also, *Spevack v. Plaza Del Prado Condo. Ass'n, Inc.*, Arb. Case No. 2004-00-2794, Summary Final Order (March 30, 2004) (Where the documents required that board members be unit owners, the arbitrator held that a board member who was a co-trustee with a life estate in a unit was eligible to sit on the board.).

The Association argues that Petitioner lacks standing to bring the present action, because at the time he submitted his notice of candidacy for the February 2007 election, he was not a member of the Association and, therefore, was not eligible to serve on the board.

Any dispute concerning Petitioner's eligibility to serve on the board has been cured and rendered moot by the transfer of ownership of the unit to Petitioner as trustee. Accordingly, the undersigned finds that Petitioner has standing to maintain this action.

#### Order Requiring Hearing Dates


By order dated April 22, 2008, the parties were directed to provide dates they would be available for a final hearing in this matter. Considering that discovery must be completed and an amended petition filed, as indicated above, the undersigned

finds it appropriate to rescind the order requiring hearing dates. The final hearing will be scheduled as soon as possible, if necessary, after the Association has filed its answer.

**Case Management Conference**

The Association has requested that a case management conference be held in this matter. If, after considering this order, the Association still wishes to schedule a case management conference, it may do so by contacting the arbitration section staff at 850.414.6867

DONE AND ORDERED this 5<sup>th</sup> day of May, 2008, at Tallahassee, Leon County, Florida.



James W. Earl, Arbitrator  
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