

FILED

Department of Business and Professional Regulation

Deputy Agency Clerk

CLERK Brandon Nichols

Date **7/6/2009**

File # **2009-05499**

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**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. 2007058989

HERITAGE CIRCLE CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____ /

CONSENT ORDER

Petitioner, the State of Florida, Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter the Division), and Respondent, Heritage Circle Condominium Association, Inc. (hereinafter the 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 that term is defined by section 120 52, Florida Statutes, that is statutorily responsible for enforcement of the Florida Condominium Act, chapter 718, Florida Statutes

2. The Division has investigated the Respondent for certain alleged violations of chapter 718, Florida Statutes, in Division investigative file number 2007058989.

3 The Respondent desires to resolve this investigation without formal administrative or judicial proceedings that might be available.

4 The Respondent and the Division agree that the statutory citations referenced in this Consent Order are intended to reference the correct statutory citations for the year(s) in which the violation(s) 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

1. The Division is the state agency charged with enforcing Chapter 718, Florida Statutes, the Condominium Act, and the administrative rules promulgated thereunder

2. Heritage Circle is a "residential condominium," as that term is defined in section 718.103(23), Florida Statutes, containing 360 residential units located in Broward County, Florida.

3. Respondent is the condominium "association," as that term is defined in section 718 103(2), Florida Statutes that operates Heritage Circle Condominium.

4 The Respondent failed to prepare year-end financial statements. Specifically, audited financial statements for the years ending December 31, 2006, December 31, 2007, and December

31, 2008, have not been produced. This represents a repeat offense within a two-year period and each year is a separate violation.

5 There is competent substantial evidence to support the foregoing facts.

CONCLUSIONS OF LAW

1. 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.

2. The Respondent failed to provide year-end financial statements for fiscal years 2006, 2007, and 2008, in violation of section 718.111(13), Florida Statutes. Each year is a separate violation.

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

AGREEMENT

1. Civil Penalty and other relief.

(a) The Respondent is assessed a civil penalty in the amount of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00) for each of the three (3) violations which involved the failure to produce the 2006, 2007, and 2008 year-end audited financial statements in violation of Chapter 718, Florida Statutes, for a total of FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00).

(b) **Suspended Penalty.** The Division will suspend a portion of the civil penalty in the amount of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00) (Suspended Penalty), contingent upon Respondent's full, good-faith compliance with the remedial actions required by this Consent Order as set forth below. This total Suspended Penalty of FIVE THOUSAND DOLLARS

AND NO CENTS (\$5,000.00) will become immediately due and payable upon Respondent's failure to timely comply with any of the remedial actions required by this Consent Order as set forth below in paragraphs (c) through (h)

(c) **Payment Due.** Respondent agrees to pay the balance of the assessed civil penalty that is not suspended, and shall remit payment in the amount of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) 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.**

(d) Respondent shall, within 10 days of the date this Consent Order is signed on behalf of the Division, submit to the Division engagement letters with a Florida Licensed CPA to prepare the 2007 and 2008 financial statements.

(e) Respondent shall, within 120 days of the date this Consent Order is signed on behalf of the Division, submit to the Division finalized audited financial statements for the years ending December 31, 2006, December 31, 2007, and December 31, 2008 in accordance with section 718.111(13), Florida Statutes and rule 61B-22.006, Florida Administrative Code and prepared by a Florida Licensed CPA

(f) Respondent shall, within 130 days of the date this Consent Order is signed on behalf of the Division, provide notice to unit-owners at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial statements for the years ending December 31, 2006, December 31, 2007, and December 31, 2008, or a notice that copies of the financial statements for the three years will be mailed or hand delivered to the unit-owner, without charge, upon receipt of a written request from the unit-owner, pursuant to section 718.111(13), Florida Statutes.

(g) Respondent shall, within 130 days of the date this Consent Order is signed on behalf of the Division, provide the Division with fully executed and notarized affidavit of mailing or hand delivery demonstrating that the foregoing notification requirement has been met.

(h) Respondent agrees to post a copy of this Consent Order, as signed by both parties, in a conspicuous place of the condominium property or where notice for meetings are normally posted for thirty (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.

(i) Respondent agrees to maintain a 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.

(j) 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 Land Sales, Condominiums, and Mobile Homes
Department of Business and Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1031

(k) Respondent agrees that its duties pursuant to this Consent Order shall not be discharged until all items that the 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.

2. **Attorney's fees and prevailing party.** The Division and the Respondent agree that the 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 the

Respondent shall bear its own costs and attorney's fees that are in any way associated with this action.

3. **Cease and Desist.** The Respondent agrees to cease and desist from any and all violations of chapter 718, Florida Statutes, and the Division's administrative rules.

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

5. **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.

6. **Failure to Comply.** As acknowledged and agreed between the Division and the 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 the Respondent of the provisions of this Consent Order, the Respondent understands 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 the Respondent to a contested hearing on any subsequent alleged violation of this order

7. **Future actions.** Nothing in this order shall be construed to waive or restrict the Division's right to initiate any action against the 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.

8 **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 the Respondent may have arising out of this administrative proceeding. The Division accepts this release and waiver by the Respondent without in any way acknowledging or admitting that any such cause of action does or may exist.

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

10. **Waivers.** The 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.

11. **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, the Respondent, Heritage Circle Condominium Association, Inc., by its duly authorized representative, Roberto Brondo, pursuant to the following certified resolution agrees to the terms, conditions, and issuance of this Consent Order on this 17 day of June 2009.

[Signature]

PRESIDENT

(Title)

Roberto BRONDO

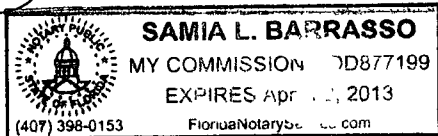
(Type or Print Name and Title)

State of FLORIDA
County of BROWARD

THE FOREGOING INSTRUMENT, CONSENT ORDER, WAS ACKNOWLEDGED BEFORE ME THIS 17th DAY OF JUNE 2009 BY Roberto Brondo WHO PRODUCED IDENTIFICATION IN THE FORM OF PL DIVERSA 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) [Signature], Notary Public

State of Florida





BE IT RESOLVED, THAT ON June 12 2009, a meeting of the Board of Directors was held pursuant to legal notice and that the Officer's signature appearing on this Consent Order, executed in Case No. 2007058989, on behalf of this Corporate Respondent, is duly authorized, empowered, and directed to execute the Consent Order on behalf of the Corporation and is further empowered to execute any other documents necessary to fulfill the intent of the Consent Order.

IN WITNESS WHEREOF, I have hereunto set my HAND AND SEAL of this Corporation this 17 day of June 2009.


CORPORATE SECRETARY'S SIGNATURE

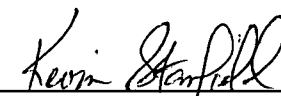
CORPORATE SEAL


REPRESENTATIVE/ATTORNEY
1925 Brickell Ave., Ste. D-205
Miami, FL 33129
(305) 854-6333
(Address, Telephone)


CONTACT PERSON
4300 NW 9th Ave
Deerfield Beach, FL 33064
(954) 941-0502
(Address, Telephone)

DONE AND ORDERED in Tallahassee, Leon County, Florida this 30th day of June 2009.




So Michael T. Cochran, Director
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
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 Il Young Choi, Esq., Registered Agent of Respondent and Attorney for Respondent, 1925 Brickell Avenue, Suite D-205, Miami, Florida, 33129, this 6th day of July 2009.

for: Brandon M. Nichols
ROBIN MCDANIEL, DIVISION CLERK

Copies furnished to

Darlene M. Anderson
Financial Examiner/Analyst II
Bureau of Compliance

Heritage Circle Condominium Association, Inc.
4300 N.W. Ninth Avenue
Pompano Beach, FL 33064