

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAD SALES, COOPERATIVES, AND MOBILE HOMES

M:

FILE: PETITION FOR RECALL ARBITRATION

Filed with
Arbitration Section

Stephen Smith

Petitioner,

v.

Case # 2009-03-4877

MAR - 1 2010

Water Bridge 2 Association, Inc
Respondent,

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

PETITIONER'S RESPONSE IN OPPOSITION OF
RESPONDENT'S MOTION TO SET ASIDE DEFAULT

COMES NOW, The Petitioner and files this Response In Opposition To Respondent's Motion To Set Aside Default. The Petitioner avers that the Respondents Motion should be denied based on the following:

- On February 18, 2010 Arbitrator David R Slaton, wrote within his order that the Respondents "If Respondent demonstrates good cause for setting aside the default, the arbitrator will do so." The Respondents attorney replied within the Respondent's Motion to Set Aside Default and stated its introduction and paragraph number 1 that "it was inadvertently lost prior to physical receipt". This is troubling, please pardon the expression but that is a bold faced lie. There were three (3) eye witnesses, that clearly saw Mr. Echeverria throw the papers away. Andre Echeverria was served in the capacity as the Vice President of the Board of Directors, Mr. Echeverria also happens to be the Registered Agent of the corporation and who was in physical possession of the entire petition packet which Arbitration ordered the Petitioner make service upon the Respondent. Additionally, served by process server was a letter from petitioner requesting and inspection of association records attached as Exhibit "A". Upon service being perfected at his unit 316 Mr. Echeverria and now in physical possession of the served document walked toward the center of the building on the third floor catwalk yelling at the petitioner using profanity and said "don't you send anyone to my door at ten o'clock at

night, you know who our attorneys is" then while pointing and yelling he whip his hand up throwing the papers off the third floor and then walked back to his unit. Moreover, Mr. Echeverria is the current acting President and chairperson for the board who also headed the so-called and fraudulent recall. Please view the DVD which was sent to Arbitration and Respondent which Mr. Echeverria threw away. The Petitioner would like inform Arbitration that Mr. Echeverria is acting as the President of the Water Bridge 2 because Jacqueline Chance is currently being prosecuted by the State for battery upon the Petitioner Stephen Smith.

2. After service had been made and to avoid further incidence the Petitioner Stephen Smith and witness Elaine Schwartz left the building and to settle up with the Process Server Mr. Coleman. Shortly thereafter Stephen Smith and Elaine Schwartz returned to the building where the paperwork still laying all over the grass in the front of the building.
3. The throwing away of the papers by Andre Echeverria was an intentional act this was not an something that was inadvertently done, not a oversight or mishaps. Mr. Echeverria DID OT loose the paperwork it was deliberately thrown away, in fact Board Members had been evading process of service for months.
4. As all board members, Andre Echeverria and Kathy Sandy have a fiduciary responsibility to accept all paperwork for the association, not only have Andre Echeverria, Kathy Sandy and Jacqueline Chance he evaded service but also does not reply to official letters and requests and then makes false statements. Mr. Echeverria actions are intentional and egregious with no regard for the law laws, arbitration or the association's responsibility to answer the Arbitration Petition. (The actions by Mr. Echeverria were written within the Process Server's return of service report, which was included with the Notice of Filing of Return of Service,
5. On Thursday January 28, 2010 the Water Bridge 2 Association board held a meeting at the club house; this meeting as all was being video and audio recorded. The board and some attending residence of the association were witness to statements made by Mr. Echeverria and was informed by the Petitioner that the association was in default for not answering the Petition for Arbitration. The board and unit owners present were informed as to what Mr. Echeverria had done with the papers after being served. The clock which was already ticking and the majority of the board knew about the filing of a default, they did not exercise due diligence, they had already had two different law firms representing them at the time and they did nothing.

6. Counsel for the respondents has made errors within the cited statutes, Fl. RCP and administration code. Respondents counsel cites "section 718.501 (1) (f)" and "section 719.501 (1) (f)" through Plaintiff's research he finds that there is no such subsections within the statute. Also petitioner states that Respondents Motion is legally insufficient. *There is an (4) (f) the division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.*
7. Respondent's Counsel cites 61B-50.117 which again only discusses the manner in which motions or opposition shall be submitted. Respondent states their actions were "inadvertently" performed. Per the statements by witnesses and the report from the process server we know this to be untrue as the documents were intentionally discarded by the Mr. Echeverria.
8. Respondent's Counsel alleges some meritorious defense. However, respondent fails to state what they are within their Motion to Set Aside and merely requests that Arbitration accept their answer.
9. The minutes submitted by the Kathy Sandy have been manufactured after the fact and are not factual accurate. Please view the DVD of Meeting which was issued to Arbitration. Please watch the video what actually transpired during the course of the meeting. Moreover, Kathy Sandy states that Jacqueline Chance appeared by phone near the end of the meeting however, now you can see Mr. Echeverria and Mrs. Sandy violated 718.112 (5) *A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting. Truth is we do not know who was on the phone.*
10. Moreover, in trying to show a pattern of corruption by Andre Echeverria and Kathy Sandy, this is not the first time that Echeverria and Sandy have abused his power as the leading board members. In 2008 Mr. Echeverria and Sandy had refused to give access to Association records which as Sandy was the Secretary and Echeverria who was the custodian of, did in fact refuse access to the association records. Arbitration found against the Association that the board's actions were willful denial to access to associating records Case No. 2008-037428.
11. In light of the fact that the board was given notice and again (all of which was caught on video and audio recording) the board had much more than the allotted time to respond to Arbitration's demand for an answer. Moreover, this case was filed over 7 months ago, the

board members were evading the process of service the board was on multiple occasions notified that Stephen Smith file with arbitration on the recall. By Mr. Echeverria's actions as the Vice President, Acting President and Chairman as well as the Registered Agent for the corporation, being that they were intentional the association waived the right of vacating a default. *Please See Attached Letters From Witnesses And Process Server exhibit A, B and C*

12. The Respondent has not shown sufficient explanation and Respondent's motion does not give rise to a meritorious defense. *See Tanglewood Environmental Preservation Assn., Inc. v. Thomason. Case 96-0308 Order Denying Motion to Set Aside Default April 4, 1997*.
13. The Respondent fails to demonstrate excusable neglect and due diligence.
See Park East Home Owners Assn., Inc. v. Perez, Case No. 96-0351 Order on Respondents' Verified Motion for Rehearing and To Set Aside Order on Default April 9, 1997)

WHEREFORE, as the Respondent has not established a "sufficient explanation for why an answer was not timely filed" and has not shown due diligence, meritorious defense or just cause the Petitioner respectfully requests that the Arbitrator deny Respondent's Motion To Set Aside Default and enter a final default judgment against the Respondents Water Bridge 2 Association Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by first class, U.S. mail and/or fax upon the following: DBPR, Arbitration Section, 1940 N. Monroe Street, Tallahassee, Fl 32399-1029 fax: 850-487-0870, and Attorney for the Respondent, Claire Cubbin Esquire 2101 N Andrews Ave. Suite Nos. 401-402 Fort Lauderdale, Fl. 33311 Fax: 954-566-5859 on or about the 2 day of March, 2010.



STEPHEN D. SMITH
PETITIONER
5950 DEL LAGO CIRCLE, #209
SUNRISE, FL 33313

Return of Service

State of Florida

Case No. 2009-03-4877

Petitioner:
Stephen Smith

Vs

Respondent:
Water Bridge 2 Association, Inc

Received by the 4th day of January, 2010 at 9:30pm to be served on Andre Echevarria (Vice President), 5950 Del Lago Circle Apt 316, Sunrise, FL 33313.

I, Joek Coleman, do hereby affirm that on the 4th day of January, 2010 at 10:00 pm, I:

Individually/Personally served by delivering a true copy of the Dispute Recall Arbitration Petition with the date and hour of service endorsed thereon by me, to: Andre Echevarria and Orlando at the address of: 5950 Del Lago Circle Apt 316, Sunrise, FL 33313, and informed said person of the contents therein, in compliance with state statutes.

Addition information pertaining to this Service:
1/4/2010 10:05 pm Service was witnessed throwing the documents off the third floor balcony. Service was with Mr. Orlando.

Description of Person Served: Age: 48, Sex: M, Race/Skin Color: Tan, Height: 5'9, Weight: 170. Hair: Gray.

I certify that I am over the age of 18, have no interest in the above action, and am a Special Process Server, in good standing, in the judicial circuit in which the process was served.



Joek Coleman 916
Process Server

801 W Oakland Park Blvd
Fort Lauderdale, FL 33311
(954) 868-5279
Service Fee: \$15.00

State of Florida
Arbitration Section
1940 N Monroe Street
Tallahassee, FL 32399

To Whom It May Concern:

My name is Jock Coleman. I am an Independent Process Server appointed by the Broward County Sheriff and my SPS Number is 916. It has come to my attention that there have been false statements made about my service of paperwork upon the respondent and the reaction of the recipient after service was made. In an attempt to put this issue to rest I am writing this letter to your department.

Orlando had in his hand the paperwork I served. Just prior to going over to the address to serve the paperwork I met with Mr. Smith who retained my services at the Dunkin Donuts across the street along with a woman. Mr. Smith showed me pictures and video of the man I was to serve, the vice president of the board a Mr. Andre Echeverria. He gave me the packet and explained what was to be served which was a packet with a petition from the State of Florida Arbitration case number 2009-03-4877. Along with the packet Mr. Smith also asked me to serve a letter requesting to see financial, insurance and other document records of the association.

Within my return of service report, I stated the time in which service was made, which according to my records was January 4, 2010 at 10:00 PM. It was service to the man who answered the door, Orlando, at 5950 Del Lago Circle #316. Orlando accepted the paper work and shortly thereafter, another man, Andre Echeverria, appeared yelling at me and was walking along the 3rd floor walkway.

Based upon the video I saw I did identify the man who was to be served, it was Mr. Echeverria and he was in possession of the served documents. Mr. Echeverria walked along the 3rd floor balcony, yelling and cursing and then threw away the documents by tossing them off the 3rd floor. As I drove away from the building I saw the documents lying on the grass. I also saw Mr. Echeverria return to his apartment.

As I drove away, Mr. Smith who was waiting for me near the middle. He returned to his car and followed me out. He paid me for my services and later that night I gave him the return of service he needed to complete the process.

For any further information I may be contacted at 954-868-5279



Jock Coleman 916

Exhibit C

On the night of January 4, 2010, I was a witness to the process which took place at 5950 Del Lago Circle in Sunrise, Florida.

Mr. Smith and I first met the process server, Jock, at the Dunkin Donuts on located on West Sunrise Blvd near Water Bridge. Mr. Smith had to give the documents to him and advised which apartment to go to and to describe Andre Echeverria.

After driving over to the building Mr. Smith parked in his designated spot and pointed the way to Echeverria's apartment (316). The process server took the stairs to the third floor and walked down to the unit. I saw him hand the papers through the door and walked away.

After the process server came back to the car, I witnessed Echeverria walk down the 3rd floor toward us. He was yelling and he threw the papers he was served up into the air from the third floor.

I suggested to Mr. Smith that we leave to finish up with the process server to so that he could avoid any problems with Echeverria. After Mr. Smith paid and finished up with the process server, Mr. Smith and I drove back to see if the papers had been picked up off the grass and when we returned they were still there, blowing over the grass.

From what I could tell Mr. Echeverria was angry with Mr. Smith and did not care about the papers which were served and simply through them away.

I hereby to swear that the testimony I have written here is the truth as it is known to me.


Elaine Schwartz