

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

IN RE: PETITION FOR ARBITRATION

David B. Parker ,

Petitioner(s),

v.

Case No. 2007-04-5781

East Linden Estates  
Homeowners Association, Inc.,

Respondent.

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ANSWER TO PETITION FOR ARBITRATION

Respondent shall file this answer, or an appropriate motion, within twenty (20) days of receipt of the petition for arbitration. Note to Respondent: Section 718.1255, F.S., provides that the prevailing party in an arbitration proceeding is entitled to collect its attorney's fees and costs from the party who loses. In other words, if you do not prevail, you will be required to pay petitioner's costs and reasonable attorney's fees. Therefore, early resolution of this dispute is encouraged.

Name, mailing address, and phone number of Respondent (party filing this answer):

East Linden Estates Homeowners Association, Inc., c/o Robert L. Tankel. P.A. 1022 Main Street,  
Dunedin, FL, 34698 (V) 727.736.1901

Name, mailing address, and phone number of Respondent's representative, if any:

Robert L. Tankel, Attorney at Law

If Respondent's representative is not an attorney, attach DBPR Form ARB 96-002, QUALIFIED REPRESENTATIVE APPLICATION, as required by Rule 61B-45.004, Florida Administrative Code.

## RESPONSE TO STATEMENT OF THE FACTS

State those facts from the STATEMENT OF FACTS portion of the petition that you deny. Refer to the particular paragraph in the petition that you dispute. All facts not specifically denied will be considered admitted.

(1) Petitioner does not lay out any cognizable set of facts that can be responded to *seriatim*. Therefore Respondent replies to what is believed to be the central issue in the Petition.

(2) Admitted that the enclosures say what Petitioner alleges they say. Without knowledge and therefore denied as to the legal conclusions or version of the facts contained therein.

### DEFENSES

State all defenses, including all facts supporting each defense, and all additional facts that may be relevant.

(1) There was a transcription error in the tallying of the votes. Petitioner was asked to review the analysis of the ballots and other election materials the night of the meeting, but refused. Petitioner should be estopped from complaining about the results. Mr. Rosen did not touch the ballots and affidavits or testimony can be obtained to that effect. None of the election materials, attached hereto and incorporated herein as Composite Exhibit A were tampered with or otherwise altered, modified or changed.

(2) Article VII of the Bylaws is irrelevant. It deals with election of officers. Petitioner seeks installation as a director. The Bylaws speak for themselves regarding the composition of the officers and Petitioner alleges nothing of merit regarding the election or appointment of new officers.

(3) Contrary to the allegations of Petitioner, Ken Kral was never "credited" with any "found" vote. It makes no difference and the Arbitrator should ignore it. See Cartagena v. Hilltop Condo. Assn., Inc, Case No. 93-0022 ( Goin/Final Order/June 17, 1993).

(4) The election procedure was established jointly by several persons, including Petitioner, and communicated to the membership. A major feature of the process is that it included an audit trail. Petitioner is estopped from complaining about or objecting to the election/proxy submission/balloting method he participated in and agreed to until it worked adverse to his interests.

(5) Petitioner was able to analyze the results of the voting at any time prior to the

filing of this Arbitration. Failure to do so constitutes failure to meet a condition precedent to the bringing of this action, or at a minimum, unclean hands by Petitioner.

### Legal Analysis:

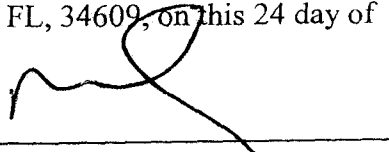
There are several arbitrations that stand for the proposition that clerical errors do not stand in the way of an otherwise valid election. *See e.g., Cuervo v. West Lake Village II*, Case No. 94-0182; *Prawdzik v. Marine Colony Condo. Assoc. Inc.*, Case No. 2003-05-8285. *See also Bechstrom v. Volusia County Canvassing Board*, 707 So. 2d. 720 (Fla. 1998), where the Court ruled that the election should be void only if the substantial noncompliance resulted in doubt as to whether a certified election reflected the will of the voters.

Here, the attached material shows, without a doubt that the will of the voters was to elect persons other than Petitioner. Petitioner makes several conclusory statements about the chain of custody of the voting materials, yet participated in the process, and, when asked to personally review the correct tally immediately after the election, refused to do so. Petitioner cannot now allege fraud, or other irregularities where the result is the same now as it was at the time he refused to review the election materials.

WHEREFORE, Respondent asks that the Petition be dismissed and that the results of the election be allowed to stand, as properly reflecting the correct tally of the votes as submitted. Furthermore, no jurisdiction exists to hold any of the alleged individuals named in the Petition as Respondents, and therefore Respondent Association requests that those individuals be dismissed from this proceeding.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: David B. Parker, 12470 Winston Court, Spring Hill, FL, 34609, on this 24 day of September, 2007.



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