

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

IN RE: PETITION FOR ARBITRATION

Paul Preston,

Petitioner,

v.

Case No. 2007-04-5085

**Spanish Isles Property Owners'
Association, Inc.,**

Respondent.

SUMMARY FINAL ORDER

Statement of Issues

The issues in this case are whether the Association properly conducted election of directors, and if not, what relief may be provided through arbitration.

Pleading and Procedure

The Petition for Arbitration in this election dispute was filed August 6, 2007 challenging the annual election of February 27, 2007, because only three directors were elected. The Petition alleges that six seats should have been vacant and up for election at that meeting. An Order Requiring Answer, issued on August 17, 2007 also required the Association to file copies of notices and minutes for the election and a current roster of the directors with the respective terms of each. Respondent, Association, filed a Motion to Dismiss that was denied on September 19, 2007. The Order denying the Motion to Dismiss also ordered the Association to file additional documents to provide details for the selection of each director and designation of the term of office for each

director. On October 5, 2007, the Association filed its Answer and the supporting documents.

This Summary Final Order is based on the pleadings and exhibits filed by the parties.

FINDINGS OF FACT

1. The board of the Association consists of nine directors. The governing documents provide that the directors will serve staggered three year terms, with three seats coming up for election each year.

2. The annual election on February 27, 2007, selected new directors for "seat 1", "seat 2" and "seat 3", because the terms for those seats expired at that time.

3. Because of certain maneuvers by sitting directors, seat 1, seat 2, and seat 3 had been vacated before the end of the term.

4. On August 24, 2006, the director in seat 1 resigned. Five remaining board members immediately appointed her to serve as the director for "seat 7", which has a term continuing to 2009.

5. On September 1, 2006, the director in seat 2 resigned. Five remaining board members immediately appointed her to serve as the director for "seat 4", which has a term continuing to 2008.

6. On December 10, 2006, the director in seat 3 resigned. Five remaining board members immediately appointed her to serve as the director for "seat 5", which has a term continuing to 2008.

7. Seat 5 had become available because the director occupying that seat had been appointed to "Seat 9". The previous occupant of Seat 9 had died. This

replacement was accomplished apparently without a resignation on the part of the then Seat 5 director.

7. The reasons given in the resignation letters lack credibility in light of the immediate reappointment of the directors to longer terms.

8. In August 2006, a non-board member had been appointed to fill "Seat 6".

9. Article V, Section 3 of the By-laws of the Association provides that, in the event of the death, resignation or removal of a director, his successor shall be selected by the remaining members of the board and shall serve for the unexpired term of his predecessor.

10. Petitioner participated in the election of February 27, 2007. He was nominated from the floor for one of the vacant director seats. There were seven candidates in all. Petitioner was not one of the top three who were elected. Petitioner does not challenge the election of those three individuals to the board.

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 are no material facts left 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.

The only statutory requirements and limitations for election of homeowners' association directors are found in subsection 720.306(9), F.S.:

ELECTIONS. – Elections of directors must be conducted in accordance with the procedures set forth in the governing

documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

The reappointment maneuvers utilized by the board allow individuals to continue on the board for more than three years without running for re-election. Although this may seem contrary to the intent of the By-laws, it does not violate statute or any governing document of the Association. In fact, the maneuver applies provisions of the Association's By-laws that closely parallel the statutory scheme with respect to condominiums. Section 718.112(2)(d)(8), Florida Statutes, provides that a vacancy may be filled by a majority of the remaining board, with the appointee to serve the unexpired term of the seat being filled.

The authority of the arbitrator is circumscribed by the bylaws of the Association and Chapter 720, Florida Statute. Arbitration cannot provide a remedy in an election dispute without specific reference to those authorities.

Based on the foregoing, it is ORDERED that the relief sought in the Petition for Arbitration is Denied.

DONE AND ORDERED this 10th day of October, 2007, at Tallahassee, Leon County, Florida.



Bruce A. Campbell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
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