

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

IN RE: PETITION FOR BINDING ARBITRATION – HOA ELECTION DISPUTE

LAURA TURNER,

Filed with
Arbitration Section

Petitioner,

NOV 24 2015

v.

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

Case No. 2015-02-8216

**BUTLER FARMS HOMEOWNERS
ASSOCIATION, INC.,**

Respondent.

SUMMARY FINAL ORDER

Statement of the Issue

At the annual meeting and election the Association did not meet the quorum requirement so no business could be conducted and no election was held. The issue presented is whether it was improper for the Association to fail to seat Petitioner, Laura Turner on the board of directors for a full two-year term.

Relevant Procedural History

On July 10, 2015, Petitioner, Laura Turner, filed an amended petition for arbitration of an election dispute naming Butler Farms Homeowners Association, Inc. (the Association) as Respondent. The annual meeting and election were scheduled for April 21, 2015. There were three seats up for election.¹ The petition alleges that the Association violated section 720.306, Florida Statutes, by failing to place Petitioner on

¹ The Articles of Incorporation at Article VII a, state, the board of directors shall have no less than three and no more than nine directors. None of the pleadings indicated there were more than the three incumbents who comprised the board.

the board since she was the only person who filed notice of her intention to seek a seat and there were more board seats available than declared candidates running for a position on the board. The request for relief was an order, 1) declaring that an election was not required since there were more board of directors' seats available than candidates in the 2015 election; and 2) recognizing Petitioner as a member of the board of directors.

On July 15, 2015, an order requiring answer was issued and on July 30, 2015, the Association's answer was filed. Without an order requiring a reply to the answer, Petitioner filed a reply on August 18, 2015, two days later filed a motion for summary disposition of the arbitration and on August 24, 2015, filed an amended motion for summary disposition. A case management conference was held on August 24, 2015, and the Association was given until September 16, 2015, to file a response to Petitioner's amended motion for summary disposition. On September 24, 2015, Petitioner again filed a request to grant her amended motion for summary disposition and on October 22, 2015, an order to produce was issued to the Association.

The production order required the Association to state the number of seats which comprised the board and to prove that the incumbents whose seats were up for election, Lyle Schwartz, Joan Shack and David Whitbourne, had filed timely written notices of their intent to run for re-election at the April 21, 2015 election. They were given until November 3, 2015 to file its response. As of the date of this order, the Association has failed to comply with the production order.

Findings of Facts

1. Butler Farms Homeowners Association, Inc. is the governing body of the Association with the responsibility to operate the Association and to maintain its property.
2. Petitioner is a parcel owner in the Association and is therefore a member of the Association.
3. The Annual meeting and election were scheduled for April 21, 2015. On March 19, 2015, Petitioner by email submitted a notice of her intention to seek one of the three available positions on the board. The Association acknowledges the receipt of this notification.
4. On meeting day, the Association did not reach a quorum so no business could be conducted and no election could be held. The meeting was not adjourned.
5. The Association immediately thereafter, held an organizational meeting and passed a motion that the incumbents, Lyle Schwartz, Joan Shack and David Whitbourne, be given new two-year terms.

Conclusions of Law

The arbitrator has jurisdiction over the parties to and the subject matter of this election dispute pursuant to sections 720.306(9)(c), and 718.1255, Florida Statutes.² It is appropriate to render a summary final order in this matter pursuant to Rule 61B-80.114, Florida Administrative Code, because this dispute does not involve any disputed issues of material facts.

² Section 720.306(9)(c), FSA states: Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division.

The Failure to Attain a Quorum at the Annual Meeting and Election

The petition claimed that Petitioner was the only person who filed a timely written notice that she would be seeking one of the three available open positions on the board at the election scheduled for April 21, 2015. Initially in its answer, the Association disputed this fact. When ordered on October 22, 2015, to produce proof that incumbent board members, Lyle Schwartz, Joan Shack and David Whitbourne had also filed written notices of their intention to run for reelection, the Association did not respond.

The undersigned finds that Petitioner was the only person who notified the Association that she was going to run for a seat on the board. In accord with section 720.306(9)(a), Florida Statutes which provides: an election is not required unless more candidates are nominated than vacancies exist, the three incumbents should have been removed from the board leaving Petitioner as the only director. Since the terms of Lyle Schwartz, Joan Shack and David Whitbourne expired due to their failure to qualify as candidates for reelection these three seats should have been announced as vacant.

Instead of naming Petitioner to the board, the same evening the Association immediately held an organizational meeting where a motion was passed to retain the incumbent board members, Lyle Schwartz, Joan Shack and David Whitbourne, for full two-year terms. There is no statutory authority which supports the Association's decision giving the incumbents new terms in this manner.

Article IV2 of the Association's bylaws provides:

Any vacancies occurring on the Board of Directors because of death, resignation or other termination of services of any Director shall be filled by the Board of Directors after consulting with the nominating committee. A Director appointed to fill a vacancy shall be appointed for the unexpired

term of his predecessor in office and until his successor shall have been elected and/or appointed and qualified.

In conjunction with Article IV 2, of the bylaws and what should have occurred at the annual meeting, Petitioner as the only remaining member of the board and according to the Association's bylaws, is authorized to fill any vacant seats by appointment for full two-year terms.

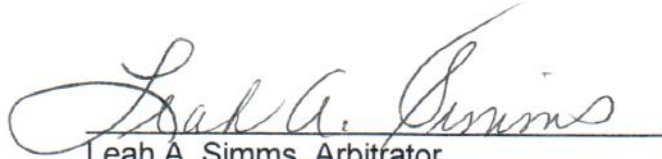
The 60-Day Statutory Limitations Period

An additional defense the Association raised was the suggestion that the date the petition was filed, violated section 720.306(9)(a), Florida Statutes, which requires any challenge to an election process be commenced within 60 days after the election results are announced. However, no election occurred because there were more vacancies available on the board than there were candidates seeking those seats. Therefore, the 60 limitations period does not apply. Petitioner's allegation that the Association mishandled the April 21, 2015 annual election, is well taken and Petitioner's request for relief is **GRANTED**.

Accordingly, the following Order is being entered.

1. Incumbent board members Lyle Schwartz, Joan Shack and David Whitbourne, are removed from the board effective immediately and within 5 full business days after the issue date of this order they shall return to the Association any and all records of the Association in their possession.
2. Petitioner is to be seated on the board immediately to serve a two year term and pursuant to Article IV2 of the bylaws, Petitioner may fill the remaining vacancies by appointment.

DONE AND ORDERED this 24th day of November, 2015, at Tallahassee, Leon
County, Florida.



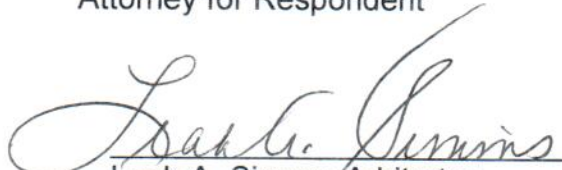
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Summary Final
Order has been sent by U.S. Mail to the following persons on this 24th day of November,
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