

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,

Case No. 2007-06-4581

Petitioner,

v.

SPANISH ISLES PROPERTY  
OWNERS' ASSOCIATION, INC.,

Respondent.

RESPONDENT'S RESPONSE TO ORDER AFTER CASE MANAGEMENT  
CONFERENCE AND SUPPLEMENTAL ORDER DATED FEBRUARY 29, 2008

Respondent, SPANISH ISLES PROPERTY OWNERS' ASSOCIATION, INC. ("SPANISH ISLES"), by and through its undersigned counsel, hereby responds to the Order After Case Management Conference entered February 11, 2008 ("Order After CMC"), as well as the Order on Petitioner's Motion for Discovery, Order on Respondent's Motion for Clarification and Request for Additional Time, and Order Extending Time for Petitioner to File an Amended Petition ("Supplemental Order"), as follows:

SPANISH ISLES is herewith providing and submitting to the Division and Arbitrator Lang, as well as copying to PAUL PRESTON ("PRESTON"), those recall ballots that it has been able to locate, more than eighteen months after the recall of PRESTON in August 2006. As of this date, less than ten percent (10%) of the full complement of recall ballots concerning PRESTON remain among SPANISH ISLES' records.

SPANISH ISLES has been prejudiced in complying with the Order After CMC and

Spanish Isles Property Owners Association Inc.  
P.O. Box 970532  
Boca Raton, Florida 33497

Feb. 21, 2008

State of Florida  
Dept. of Business and Professional Regulation

Attention: Arbitrator Lang

Dear Mr. Lang,

You have requested that we send you the ballots from Paul Preston's recall for the DBPR arbitration case. During an inspection of HOA records made by Paul Preston on August 11, 2006, Mr. Preston was reprimanded more than once for trying to put HoA documents in several folders that he carried into the inspection. I personally caught him taking documents of interest to him and slipping them under and in these folders. He had on that particular day, pens, pencils, folders, camera, paper clips and a multitude of other office supplies. He spent several hours at the inspection during which time I had occasion to leave the inspection room.

I called Jonathan Miller after the inspection informing him of the possibility that Mr. Preston may have taken HOA documents out in the folders. We thought it odd that Mr. Preston only paid for copies of what seemed to be randomly chosen data such as legal letters and violations, which did not involve him personally. Due to the quantity of records and the disorganization of the record folders it was impossible for me to determine which records, if any might have been removed by Paul Preston. It was after this inspection that the Board passed a resolution concerning future inspections and what items were to be brought into an inspection.

On the March 2007 inspection, Paul Preston brought along a witness who is a convicted felon. At this inspection the witness, Nelson Villalobos tried to take a box of HOA records from the premises. In my efforts to subdue Nelson Villalobos and remove him from the premise, a struggle ensued inside and then outside. During this distraction, Paul Preston had every opportunity to take records, as he was alone inside while I struggled. When the police were called, Mr. Preston and Mr. Villalobos ran off the property. (PBSO Case # 07-044135)

The Board discovered after your request for the recall ballots that good portions of them are missing. The boxes containing numerous records from prior and present year were re-organized by the Secretary who would not have noticed missing documents. She was elected in 2007 and the recall was prior to her time. It would appear that Mr. Preston has been grand standing this entire time knowing full well in desperation that he took the documents.

I'm enclosing a letter from the homeowner representative who collected the recall ballots. If need be, he has agreed to sign a notarized affidavit.

Supplemental Order requiring SPANISH ISLES to produce all recall ballots from August 2006 concerning PRESTON; however, such records that still remain among SPANISH ISLES' records are produced herewith. Such prejudice to the Association arises due to the time that has elapsed since the recall took place, as well as the reasonable likelihood of intervention by PRESTON regarding the recall ballots, from his previous inspections of SPANISH ISLES' records on August 11, 2006, March 1, 2007, and June 5, 2007. See attached Exhibit "1", correspondence from President Donna Don, concerning such prior inspections by PRESTON, and incidents related thereto. SPANISH ISLES cannot, as of this time, identify with specificity additional parties executing recall ballots of PRESTON, whether executed in or before August 2006. Additionally, SPANISH ISLES cannot identify whether recall ballots were discarded after PRESTON was defeated in running for the Board of Directors in 2007, or prior to that event. The recall records may simply have been misplaced or lost, a real-life consequence which occurs due to the passage of time.

In the Supplemental Order, the Division takes the position that it is "reasonable to expect the homeowner's association to retain the recall ballots relating to [Preston's] recall at least until the expiration of the term to which he originally was elected." Unfortunately, "reasonable" does not always match reality. Certainly, there is no stated requirement under Chapter 720 for retention of recall ballots or related records, which the Arbitrator has directed to be produced by its Order After CMC, nor a requirement that such records must be retained by the homeowners association for the period of time that the Arbitrator deems a "reasonable" period of time. Indeed, the applicable statute does not contain a mandate that a homeowners association must retain such recall ballots 'for a reasonable period of time', which would have to first be established in advance of addressing the issue of what constitutes a 'reasonable period of time' for retaining homeowner association recall ballots.

Moreover, to SPANISH ISLES there are certain other matters pertaining to PRESTON's recent advocacy for challenge to an August 2006 recall which are reasonable:

(a) It is reasonable for the homeowner's association to deem that PRESTON waived any right to challenged the recall in August 2006 by running for the Board of Directors in 2007;

(b) It is reasonable for SPANISH ISLES to take the position that PRESTON waived his right to challenge the recall presented in this Case No. 2007-06-4581, since this constitutes a "second bite at the apple" following PRESTON's unsuccessful challenge concerning his recall as presented in Case No. 2007-04-5085, which challenge was defeated;<sup>1</sup>

(c) It is reasonable for SPANISH ISLES to deem that PRESTON waived any right to challenge the recall by waiting over eighteen (18) months in which to undertake such action; or, at the least, is it reasonable for SPANISH ISLES to deem that PRESTON is estopped from bringing such a challenge, due to the passage of time since the August 2006 recall; and

(d) On the basis of the foregoing, as well as the potential of PRESTON's removal of the SPANISH ISLES records being sought by the Division during inspections of records over the past several years, it is reasonable that the bulk of the original August 2006 recall ballots are no longer among the Association's records.

Regardless of any debate over what is "reasonable" concerning period of time for particular documents retention (such as recall ballots) for homeowner associations, versus what is required under Section 720.303(4), Florida Statutes, such debate is somewhat moot since it will not resolve the issues of the amended petition for recall arbitration, which has yet to be filed by PRESTON in amended form. There any number of potentialities regarding what

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<sup>1</sup> For that matter, Respondent further questions why this second recall has been submitted to a different Arbitrator than was assigned to consider the PRESTON's original Petition for Arbitration in a Recall Dispute.

became of the remainder of the recall ballots, as well as whether PRESTON ever put his hands on them, and if so what he did with them. However, this much we know: It cannot be stated with any reasonable degree of certainty as to what became of the remainder of the PRESTON recall ballots from August 2006.

SPANISH ISLES will respond to PRESTON's amended petition for recall arbitration, even if submitted in the form of a Chapter 718 Petition for Non-Binding Arbitration<sup>2</sup>, asserting waiver by PRESTON due to having run for the Board in 2007, and due to having previously challenged the recall and not asserting the grounds presently asserted in said Petition for recall arbitration, as well as asserting estoppel defenses due to the time that has passed in the over eighteen months since PRESTON was recalled in August 2006.

I hereby certify that a true and correct copy of the foregoing was furnished via U.S. Mail on March 3, 2008 to Paul Preston, 9276 Saddlebrook Drive, Boca Raton, Florida 33496.

RANDALL K. ROGER & ASSOCIATES, P. A.  
Attorneys for Respondent  
One Park Place, Suite 300  
621 N.W. 53rd Street  
Boca Raton, Florida 33487  
(561) 988-5598

By: 

J. Steven Hudson, Esquire  
Florida Bar No.: 602639

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With this response, SPANISH ISLES does not challenge the Division's jurisdiction over this action. The Division reasons that reverse recall arbitrations are permitted in condominium context under Chapter 718 as a petition for non-binding arbitration, pursuant to Section 718.1255. That provision permits non-binding arbitration to be brought by condominium owners. Certainly, Section 718.112(2)(j)3, by its express language, does not permit a petition for recall arbitration to be filed by anyone other than the Association itself. SPANISH ISLES' request for clarification was based upon the absence of a provision similar to Section 718.1255 for homeowners to bring petitions for non-binding arbitration before the Division. Reliance upon express language of the statutes does not, presumably, constitute 'form over substance'.

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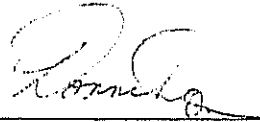
I'm enclosing a letter from the homeowner representative who collected the recall ballots. If need be, he has agreed to sign a notarized affidavit.

I'm enclosing Paul Preston's inspection dates and the resolution adopted on August 22, 2006 regarding inspections.

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Dates: August 11, 2006  
March 1, 2007 (filed PBSO case as listed above)  
May 4, 2007 (no show, signed by Sheriff Dept. witness)  
\* June 5, 2007  
\*(Removed by Sheriff from inspection for threats made to HOA president in presence of an PBSO Deputy)

Sincerely,



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Donna Don  
President of Spanish Isles POA