

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

IN RE: PETITION FOR ARBITRATION - HOA

Filed with
Arbitration Section

Leah Saar

NOV 20 2009

Petitioner,

v.

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

Wellesley at Lake Clarke Shores
Homeowners Association, Inc.,

Case No. 2009-04-3120

Respondent.

SUMMARY FINAL ORDER

Procedural History

On August 10, 2009, Petitioner Leah Saar filed the instant action against Wellesley at Lake Clarke Shores Homeowners Association, Inc. ("Association").

Petitioner alleges an election dispute pertaining to an annual meeting that was to occur on January 15, 2009, for the purpose, *inter alia* of electing 3 Board Members whose terms were expiring.

On September 15, 2009, the Association filed an Answer to the Petition.

On October 28, 2009, a Case Management Conference was held. Both parties attended, and there are no facts in dispute. Accordingly, entry of a Final Order is appropriate. Rule 61B-80.114, Fla. Admin. Code (2009).

FINDINGS OF FACT

1. The Association is the corporate entity that manages the Homeowner's Association in Palm Beach County, Florida.
2. Petitioner is a member of the Respondent Association. She owns and

resides at 8111C Northboro Court, West Palm Beach, Florida.

3. The Association organized and duly noticed its annual meeting for January 15, 2009.

4. The order of business at the annual meeting included the election of 3 Directors.

5. There are 5 members on the Board, and 3 of those members (Wellner, Morgan, and Kleen) occupied seats with terms expiring in January 2009, and they were scheduled for election at the January 15, 2009 meeting.

6. On January 15, 2009, the annual meeting was called to order; however, the number of voting interests present, both in person and by proxy, did not constitute a quorum, which was 30% of the voting interests.

7. Because there was not a quorum of voting interests present, no business could be conducted, including election of the 3 open director seats.

8. After it was determined that a quorum was not present, the meeting was ended.

9. Neither the Board of Directors nor the members who were present requested that the meeting be adjourned or postponed to a new date and time.

10. The annual meeting and election of directors was not rescheduled, and the directors who were on the Board in January 2009 have continued on as directors for the Association.

Petitioner's Argument and Request for Relief

The Petitioner makes the following arguments, based upon the undisputed facts:

1. The Association was required to organize follow-up annual meeting(s) after the January 2009 meeting failed to conduct business, due to the

absence of a quorum;

2. Directors Wellner, Morgan, and Kleen ceased to be directors after the failed annual meeting on January 15, 2009, because their terms had expired.

As relief, Petitioner requests that –

- A. The Association be required to immediately organize and hold an annual meeting, with an election for the 3 vacant directors' seats now held by Wellner, Morgan, and Kleen;
- B. Wellner, Morgan, and Kleen be deemed as non-directors, as of January 16, 2009, and any actions each individual has taken since that date to be without authority to act on behalf of the Association.

CONCLUSIONS OF LAW

The Division has jurisdiction over this matter pursuant to § 720.311, Fla. Stat. (2009) to remedy the failure of a governing body, when required by an association document to properly conduct elections.

Failed Annual Meeting

Petitioner argues that Florida law and the Association's by-laws required the Board of Directors, at the conclusion of the failed annual meeting on January 15, 2009, to designate a new date and time for the annual meeting. Petitioner draws support for this argument from the following statutory language:

Section 720.306(2), Fla. Stat. (2009):

"(2) ANNUAL MEETING.—The Association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting, or as provided in the governing documents." [emphasis added]

This statutory mandate is echoed by language in the Association's governing documents:

1. Article X (C) of the Articles of Incorporation

"Directors of the Association shall be elected at the Annual Members' Meeting in the manner determined by the By-Laws. . . . " [emphasis added]

2. Section 3.2 of the By-Laws

"3.2 The Members shall meet annually at the office of the Association . . . " [emphasis added]

However, the mandate to meet and elect directors annually is tempered by the statutory limitation that an election by the Membership can occur only by a majority vote where a quorum is present.

Section 720.306(1)(a), Fla. Stat. (2009), in pertinent part, states:

"(1) QUORUM; AMENDMENTS.—

"(a) . . . Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interest present, in person or by proxy, at a meeting at which a quorum has been attained." [emphasis added]

Section 3.7 of the Association's bylaws addresses the question of adjourning a member meeting after such meeting has failed due to the absence of a quorum:

"3.7 If any meeting of the Membership cannot be organized because a quorum is not in attendance, the Members who are present, either in person or by Proxy, may adjourn the meeting from time to time until a quorum is present. . . . " [emphasis added]

It is undisputed that the scheduled annual meeting did not have a quorum of voting interests present. Pursuant to the Association's By-Laws, at § 3.7, the members present at that meeting had the option of adjourning it to another time. No legal

authority requires the Board to assume the responsibility for adjourning, postponing or rescheduling the meeting.

Accordingly, the argument that the Board had the responsibility to organize and call another annual meeting when the first meeting failed due to the lack of a quorum is without legal support, it is not persuasive, and it does not prevail.

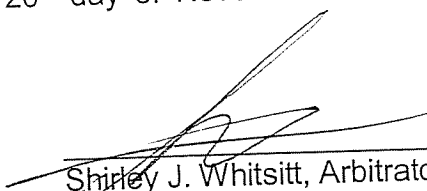
Directors Continuing Their Positions After Term Expires

Petitioner also argues that the Board Members whose seats were up for election (Wellner, Morgan, and Kleen) lost their directorships on January 15, 2009, because their terms ended. Petitioner cites no legal authority to support her argument, and it runs contrary to Florida law.

Chapter 617 of the Florida Statutes governs corporations. The Respondent is a corporation and is subject to the provisions of that chapter. Section 617.0806, Fla. Stat. (2009) states that a Director holds office for the term to which he or she is elected or appointed and until his or her successor is elected or appointed. Accordingly, Wellner, Morgan, and Kleen, whose terms were to expire, continue to hold their positions as directors until a successor is elected or appointed, or unless he or she resigns.

Based upon the foregoing, the relief requested is **DENIED**.

DONE AND ORDERED this 20th day of November 2009, at Tallahassee, Leon County, Florida.


Shirley J. Whitsitt, Arbitrator
Dept. of Bus. & Prof. Reg., Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399 -1029
Fax: (850) 487-0870

Attorney's Fees


The prevailing party is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed within 30 days of the date of the Final Order.

CERTIFICATE OF SERVICE

On the 20th day of November a copy of the foregoing Final Order was sent by facsimile and by first-class U.S. Mail, postage prepaid, to the following:

Dicker, Krivok & Stoloff, P.A.
Laurie G. Manoff, Esq.
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West Palm Beach, FL 33409

Ms. Leah Saar
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Shirley J. Whitsitt