

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

IN RE: PETITION FOR ARBITRATION

PINE ISLAND BAY HOMEOWNERS)
ASSOCIATION, INC.,)
a Florida not-for-profit corporation,)
) Petitioner,)

CASE NO.: 2009-01-1842

VS.)

MEMBERS OF PINE ISLAND BAY)
HOMEOWNERS ASSOCIATION, INC.)
SEEKING RECALL OF BOARD))
MEMBERS, individuals,))
) Respondents.)

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

MAR 23 2009

Filed with
Arbitration Section

MOTION FOR ORDER OF DISMISSAL OF PETITION FOR ARBITRATION AS MOOT

Petitioner, PINE ISLAND BAY HOMEOWNERS ASSOCIATION, INC. ("the Association"), by and through its undersigned counsel, files this Motion for an Order of Dismissal of the Petition for Arbitration as Moot, and states:

1. Petitioners seek an order dismissing their Petition for Recall Arbitration as being moot based on the certification of an intervening recall effort that effectively removed the entire board - including all members sought to be removed by the initial recall effort that is the subject of the instant Petition.
2. Briefly, on March 9, 2009 Petitioner filed the instant Petition for Recall Arbitration regarding a dispute over a recall served on the Board on or about February 27, 2009. That initial recall effort sought to recall the following three (out of the five) members of the Board for the Association: (1) Michael Gorzeck; (2) Louis Cohen; and (3) Gina McMullen.

3. Thereafter, an intervening recall was served on or about March 16, 2009 seeking to recall the entire Board.
4. The intervening recall was withdrawn on or about March 17, 2009 and subsequently re-served on March 17, 2009 - again, seeking to recall the entire board, obviously including the three members sought to be recalled by the initial recall effort that is the subject of the instant Petition.
5. On March 20, 2009, the intervening recall was certified by the Board based on the fact that a majority of the Association's voting interests submitted a ballot in favor of recalling the entire board and electing five new replacement candidates. As such, an entirely new Board is now seated.
6. As the three board members sought to be recalled by Respondents have, in fact, been recalled and are no longer members of the Board, the issues of the Petition for Recall Arbitration have been rendered moot.
7. Accordingly, it is respectfully requested that the Petition for Recall Arbitration be dismissed as moot.
8. If for any reason, this motion is denied and a reply to Respondent's Answer is still required, Petitioner requests that any order of denial include an extension of time to

Although counsel understands that the underlying basis for a recall is not to be factored into the equation by the Arbitrator, a brief background is provided here to address baseless accusations made by counsel for Respondents in her various responses to the Arbitrator.

The initial recall sought to replace board members who were in favor of a covenant enforcement litigation brought against an owner, with a replacement board (that would have included the owner against whom the litigation was brought) believed to seek resolution of the litigation by permitting that owner to violate certain covenants and reimbursing her attorneys' fees from the litigation at the expense of the entire community.

Petitioner maintains its position that the initial recall was flawed. However, when the community became aware of the duplicitous nature of the initial recall, a majority of owners wished to replace all board members with a fair and neutral board. It is believed that the intervening recall has accomplished the will of the majority of this community, replacing all members of the board (including those in favor of the

file said reply (the Arbitrator's March 16, 2009 order permitting reply was only first received on March 19th and provides a deadline to file the reply by March 23rd - only one business day after receipt).

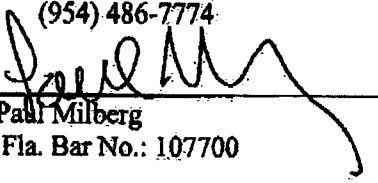
WHEREFORE, Petitioner, PINE ISLAND BAY HOMEOWNERS ASSOCIATION, INC. respectfully requests that the Arbitrator enter an Order dismissing the Petition for Arbitration with prejudice, and for any other such relief as the Arbitrator deems necessary under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

e-mail and regular U.S. Mail to Jean Winters, Esq., Winters & Winters, P.A., P.O. Box 272662, Boca Raton, Florida 33427 this 23rd day of March, 2009

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litigation) and not placing the litigants on the board. Many of the new board members are persons who previously served on the board and it is hoped that this board will ultimately be re-elected and continue to restore order to this Community.