

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

IN RE: PETITION FOR ARBITRATION-HOA ELECTION

Filed in
Arbitration Section

MARTIN NEGRON,

Petitioner,

JUL 12 2017

v.

Div. of FL Condos, Timeshares & MH **Case No. 2017-01-1731**
Dept. of Business & Professional Reg.

**ASSOCIATION OF POINCIANA
VILLAGES, INC.,**

Respondent.

ORDER ON RESPONDENT'S MOTION FOR REHEARING

On June 27, 2017, the Association of Poinciana Villages, Inc. (the Association) filed a motion for rehearing. On July 10, 2017, Petitioner filed a response to the Association's motion.

Rule 61B-80.122(1), Florida Administrative Code, states:

- (1) Any party may file a motion for rehearing or a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 15 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. A motion for rehearing shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended but shall not re-argue the merits of the final order. Any response shall be filed within 10 days of service of the motion.

Accordingly, the Respondent's motion for a rehearing is timely.

The Association is the master association and legal entity responsible for the maintenance and operation of the Poinciana Villages community. This large community spans across Polk and Osceola counties. The Association is comprised of nine individual sub-associations called Villages. Villages One through Eight sub-associations have adopted the "Association of Poinciana Villages Election Procedures for Village Elections" (Uniform Procedures), wherein the stated purpose is to establish uniform election procedures for Villages One through Eight. All of these sub-Associations have appointed the Association to run their elections. The discretion on how many votes an owner receives is vested solely with the Association.

On June 23, 2017, the arbitrator entered an order requiring the Association to hold a new election for Villages One, Two, Three, Five, Seven and Eight. The Association makes two arguments in its motion for rehearing. The first argument is that the arbitrator lacks jurisdiction to determine the voting interests of the owners of undeveloped portions of the Villages, which are not platted as lots.

Article VI, Section 4, of each of the Articles of Incorporation for Villages One through Eight provides:

(4) Avatar Properties Inc., as developer of Poinciana Subdivision, shall be a member of this Association and it shall have voting rights equivalent to the number of lots and property it owns in this Village [number] during all the time that it retains legal title ownership therein. For undeveloped portions of Village [number] which are not platted as lots, the owner of such unplatted land shall be entitled to one (1) vote for each Home which may be constructed on such land pursuant to applicable law. For purposes of this Article VI, "Home" shall mean a residential home and appurtenances thereto constructed on a lot within this Village [number]. A Home shall include, without limitation, a town home, a condominium unit, a patio home, a zero lot line home, each residential apartment within a Multi-Family Dwelling Building, and a single family detached estate home. The term Home may not reflect the same division of property as reflected on a plat. The term "Home"

includes any interest in land, improvements, or other property appurtenant to the Home.

(emphasis supplied).

The Association is correct that the arbitrator lacks jurisdiction to determine the number of voting interests, because it is the permitting authorities who determine whether a home may be built in compliance with the applicable law. *See Son v. The Gardens of Key Biscayne-Alhabmbra Condo. Ass'n, Inc.*, Arb. Case No. 94-0351, Summary Final Order (June 13, 1995)(the arbitrator declined jurisdiction on a petition for mandatory non-binding arbitration seeking enforcement of the South Florida Building Code.); *see also The Trails at Rivard Homeowners' Association, Inc. v. Homeowners Voting for Recall*, Arb. Case No. 2012-05-1710, Final Order of Dismissal (January 14, 2013). (It is not the jurisdiction of the arbitrator to determine if a plat has been properly approved by the board of county commissioners and recorded to be effective).

However, under the Uniform Procedures, the Registrar, who is an official of the Association, is tasked with determining voting eligibility and the number of ballots an owner is entitled to cast under the governing documents of the sub-associations. The arbitrator found that the Association's Registrar acted arbitrarily and capriciously in the criteria he used in determining the voting interests of the owners of undeveloped, unplatted land. An association may not exercise its discretion in an unreasonable or arbitrary manner. *Killeam Acres Homeowners Ass'n, Inc. v. Keever*, 595 So. 2d 1019 (Fla. 1st DCA 1992). Before even looking at the state and local regulations, the Registrar needed to determine if the parcel could physically accommodate the maximum density allowed. There would have to be allowance for roads, other infrastructure needs and environmentally protected areas. Indeed, votes were allocated

for land that was submerged with no indication that such land was buildable. The owner of an undeveloped, unplatted lot would have to provide actual proof that under federal law, state law and local codes that homes are even buildable. To base any determination regarding voting rights with less proof is an unreasonable and arbitrary exercise of the Association's discretion.

The June 23, 2017 Summary Final Order provided that:

The owner of an undeveloped and unplatted parcel must provide definitive proof from relevant governmental entities on how many homes it may actually, legally build on the parcel before being given more than one vote per parcel.

(emphasis in original). The arbitrator did commit error in the Order by granting the owner of an undeveloped and unplatted parcel the right to cast one vote. As pointed out by Petitioner, the governing documents require that an undeveloped and unplatted parcel must be able to sustain one buildable home to even be entitled to one vote. Therefore, the Summary Final Order will be amended to that effect.

The Association's second argument is that Petitioner did not prove that the results would be different for the elections for Villages Two, Five and Eight. Nevertheless, the extensive dilution of the homeowners' votes throughout the Villages had a strong likelihood of suppressing voter turnout. It is not possible to know how many homeowners did not cast votes because they believed that Avatar had an overwhelming advantage. Therefore, a new election is warranted.

Based upon the foregoing, it is **ORDERED**:

The June 23, 2017 Summary Final Order is amended to require that the owner of an undeveloped and unplatted parcel must provide definitive proof from relevant governmental entities on how many homes it may actually, legally build on the parcel

before the Registrar provides any ballots to the owner to vote on behalf of the parcel. The number of votes for an undeveloped and unplatted parcel shall equal the number of homes that may physically and legally be able to be built on that parcel as determined by the appropriate government entity.¹ All other provisions of the June 23, 2017 Summary Order remain in effect.

DONE AND ORDERED this 12th day of July, 2017, at Tallahassee, Leon County, Florida.



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail and email to the following persons on this 12th day of July, 2017:

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Terri Leigh Jones, Arbitrator

¹ Any challenge to the governmental entity's determination is not within the arbitrator's jurisdiction.