

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

IN RE: PETITION FOR ARBITRATION

**Harbourtowne at Country Woods
Condominium Association, Inc.,**

Petitioner,

v.

Case No. 2005-02-9267

Unit Owners Voting for Recall,

Respondent.

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FINAL ORDER ON MOTION FOR CLARIFICATION

Comes now, the undersigned arbitrator, and enters this final order on motion for clarification as follows:

The arbitrator entered a summary final order in this case on July 22, 2005. The final order determined that William Allen, who purchased most of the inventory of the prior successor developer, became a successor developer and was entitled to cast his unit votes in favor of the recall of the prior successor developer's representative. The final order also held that the durable power of attorney by which Mr. Allen designated his son as attorney in fact to vote his units in the recall effort was not required to be recorded for purposes of the recall. Under the arbitration decisions, a power of attorney is permitted to be used to vote for recall, unlike their treatment in general elections. The arbitrator declared that Mr. William Allen was entitled to recall the prior developer representative and to assume that seat on the board, and thus certified the recall.

The association filed its motion for clarification by fax on August 10, 2005. The association reports that William Allen used a durable power of attorney to purport to appoint his son, Marc Allen, to the board position awarded to William Allen. Hence, Marc Allen has been proffered as the individual to fill the vacancy created by the recall of the past subsequent developer. The respondent has filed a response to the motion and the association filed a reply to the response on August 22, 2005.

Chapter 61-50, Florida Administrative Code, does not permit motions for clarification in recall arbitration proceedings. Rule 61B-50.140, Florida Administrative Code, permits a motion to clarify a clerical mistake within 10 days of entry of the final order. The arbitrator finds that the motion for clarification is not authorized under the rules and was untimely filed in any event, and must be struck.

However, the rule also permits the arbitrator on his or her own motion to enter a corrected final order addressing any clerical errors or omissions within 60 days of the final order. The arbitrator on his own motion finds it appropriate to clarify the final order. The final order ruled that "Mr. Allen shall immediately take the place of Mr. McNamara for the remainder of the term." The order did not specify *which* Mr. Allen should assume the director's position, and given that the durable power of attorney used by Mr. William Allen for the recall appointed his son, Mr. Marc Allen, to vote his unit votes, it is conceivable that the fact that the final order in not specifying which Mr. Allen was entitled to take the seat amounts to a clerical omission in the final order.

Certainly, it was the intent of the arbitrator that Mr. William Allen was to be appointed to the board to fill the position that Mr. McNamara was recalled from. It was William Allen who took title to 136 units from the past subsequent developer. Beyond

this consideration, however, it must be determined whether a developer may appoint a non-owner to on the board in the place of his place. In the arbitration case of Grossman v. Bonavida Condominium Association, Inc., Arb. Case No. 00-0367, Summary Final Order (August 8, 2000); Order on Motion for Rehearing (September 7, 2000), the arbitrator ruled that a non-owner could properly sit on the board where the documents allowed the owner to designate a close family member pursuant to a power of attorney to sit on the board. In the instant case, there is nothing in the documents or statute that prohibits a developer¹ from appointing an individual to sit on the board in his place, whether through a power of attorney or other written instrument that serves to appoint that individual to the position. This issue was not addressed in the prior final order but the arbitrator clarifies the final order as set forth herein.

Accordingly, the arbitrator clarifies the final order as more fully set forth herein. First, the arbitrator intended that Mr. William Allen be appointed to fill the board vacancy caused by the recall. Secondly, the statute and the documents are not violated where Mr. William Allen appoints his son to occupy the board position. Accordingly, Mr. Marc Allen may properly serve on the board in the place of Mr. William Allen.

DONE AND ORDERED this 2nd day of September, 2005, at Tallahassee, Leon County, Florida.

Karl M. Scheuerman, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street

¹ This order does not address whether non-developer owners may so appoint.

Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 2nd day of September, 2005:

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