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

IN RE: PETITION FOR ARBITRATION

Fred L. Christy, Julia A. Christy,
Gary Lust and Karen Lust

Petitioners,

v. **Case No. 2009-00-3632**

Silver Cove Condominium Association, Inc.,
Raymond J. Hertz and Bobbie L Testerman,

Respondents.

_____/

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On January 16, 2009, Petitioners filed a Petition for Mandatory Non-Binding Arbitration. Petitioners are represented by counsel. The petition alleges the following:

1. Certain docks were constructed and deeded by Respondent to Petitioner Fred L. Christy.
2. Petitioner Fred L. Christy was recalled from the Board of Directors but "[t]he notice was both inadequate and not given to all unit owners." The petition notes, "A copy of the notice and purported minutes of that meeting are attached.
3. At least one unit owner "who appeared at the meeting" was denied the right to vote.

In pertinent part, the petition requests as relief that "the Division will . . . address the rights of the Petitioners."

Petitioners' pre-arbitration notice states, in pertinent part,

> Fred Christy has brought me your letter dated December 15, 2008. You did not find authorization for the deeding of the docks to Mr. and Mrs. Christy and others because you did not look. In any event, your "recall" of Mr.

> Christy violates the law. Enclosed is our petition for, non-binding arbitration. If your clients want to attempt to informally mediate this, this would be a good time.
>
> If we do not hear from you within fifteen (15) days, we will file suit against the current board and the Association for a declaratory judgment, and ask for fees and costs for being forced to do so.

Petitioners' claims with respect to the construction and deeding of docks are not within the subject matter jurisdiction of the arbitrator pursuant to section 718.1255(1), Florida Statutes, as they involve title.

Petitioners' claims with respect to the recall of Fred L. Christy appear to be an attempt to allege a form of "reverse recall" under Rule 61B-50.105(3), Florida Administrative Code, and arbitration case law.[1] Such claims are within the jurisdiction of the arbitrator. It appears Petitioner Fred L. Christy's recall was by written recall agreement.

Petitioners only allege that notice was inadequate and not given to all unit owners and simply refers to attached documents.[2] However, assuming that the notice of the recall meeting was inadequate and not given to all unit owners, the result would be certification of the recall.[3] Thus, if Petitioners' allegations are true, Petitioner Fred L. Christy's recall would be certified, yielding the same result as has occurred.

Petitioners' claim with respect to one or more unit owners appearing "at the meeting" and being denied the right to vote does not identify the meeting, who was denied the right to vote or the subject on which they purportedly were entitled to vote. However,

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[1] The arbitration rules and case law may be found at: http://www.myflorida.com/dbpr/lsc/arbitration.html.
[2] Section 718.1255(2)(j)2., Florida Statutes, and Rule 61B-23.0028(7) & (8), Florida Administrative Code, describe the notice requirements for a board meeting to address a recall.
[3] In pertinent part, Rule 61B-23.0028(7)(a), Florida Administrative Code, provides:

> (7) Failure to Duly Notice and Hold a Board Meeting. If the board fails to duly notice and hold the board meeting to determine whether to certify the recall within five full business days of service of the written agreement, the following shall apply:
> (a) The recall shall be deemed effective immediately upon expiration of the last day of the five full business days after service of the written agreement on the board.

assuming Petitioners are alleging one or more unit owners appeared at the board meeting called to address the written recall agreement and they then were denied a right to vote on the recall, such unit owner or owners were not entitled to vote on the recall at the meeting, because the time to vote on the recall was when the written recall agreement was served on the board. There also is no requirement that those who are leading the recall effort provide a recall ballot to everyone in the condominium.

Given the foregoing, Julia A. Christy does not appear to be a party. While Gary Lust and Karen Lust are named as Petitioners, their names appear no where else in the petition, thus it is unknown why the Lusts are parties.

The petition names the Association and Raymond J. Hertz and Bobbie L Testerman as Respondents. Section 718.1255(10), Florida Statutes, does permit individual unit owner petitioners to name other individual unit owners as respondents.

The petition for arbitration is supposed to set forth **all** of the facts relevant to the case in numbered paragraphs. The petition form does not instruct the petitioner to include just some of the facts or just the ultimate facts. The petitioner is required to include **all** of the underlying facts. The statement of facts should reference any relevant documents by giving them an exhibit number, and the documents should be attached to the petition and have the exhibit number marked on the document.

In addition, the petition form requires the petitioner to “identify and quote” the relevant rules, statutes, or provisions of the condominium documents entitling the petitioner to relief. Petitioners identified some statutes and some provisions from the by-laws, but did not quote them. Additionally, Petitioners did not refer to or quote the relevant rules of the Florida Administrative Code, some of which may be especially relevant. The requirement for quoting the relevant rules, statutes, and provisions is for

clarity and convenience in establishing that the petition actually states a cause of action, but it also ensures that the parties and the arbitrator are all using the same version of the relevant rule, statute, or provision.

The importance of these requirements cannot be overstated. Many cases are decided by a summary final order because the underlying facts have been fully set forth, the respondent does not dispute those facts, and the case can be resolved based on an interpretation of the rules, statutes, or condominium documents as applied to the agreed upon facts.

Additionally, section 718.1255(4)(k), Florida Statutes, provides that the losing party is responsible for paying the other party's attorney's fees and costs.

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

1. Petitioners' claims with respect to title to docks are dismissed for lack of jurisdiction.

2. On or before February 9, 2009, Petitioners shall file an Amended Petition for Mandatory Non-Binding Arbitration that complies with the form petition authorized by Rule 61B-45.001, Florida Administrative Code, by:

a. Naming proper parties as Petitioner and Respondent;

b. Stating all of the underlying facts related to the dispute in numbered paragraphs in the amended petition including facts from exhibits and identifying all documents that are relevant by exhibit number or letter and referring to them in the petition by the number or letter;

c. Quoting from the relevant statutes, rules and condominium documents;

d. Providing a copy of the amended petition and copies of the pertinent portions of the condominium governing documents and amendments to them for service

on the respondent; and

e. Stating the specific relief requested.

3. Failure to comply with all of the requirements of this order will result in the dismissal of this case.

DONE AND ORDERED this ___ day of January, 2009, at Tallahassee, Leon County, Florida.

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Glenn Lang, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Copies furnished to:

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