

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

IN RE: PETITION FOR BINDING ARBITRATION – HOA ELECTION DISPUTE

T. MARVIN HANCOCK,

Petitioner,

v.

Case No. 2012-03-3971

**PELICAN LANDING COMMUNITY
ASSOCIATION, INC.,**

Respondent.

_____ /

FINAL ORDER OF DISMISSAL

On August 6, 2012, T. Marvin Hancock (Petitioner) filed a petition for mandatory binding arbitration of an election dispute naming Pelican Landing Community Association, Inc. (the Association) as the respondent. On September 6, 2012, the Association filed a motion to dismiss the petition to which Petitioner filed a response on September 20, 2012.

The Association is responsible for the operation of the Pelican Landing community located in Lee County, Florida. Article VI of the Association's Articles of Incorporation provide that the Association shall be administered by a board of directors.

Section 6 of the Association's By-Laws create a Neighborhood Committee neighborhood for each neighborhood that does not have an incorporated neighborhood association. Section 6.1 of the By-Law describes the purpose and powers of the Neighborhood Committees:

The primary purpose of the Neighborhood Committee is to provide an informal organization within each Neighborhood that does not have a

formal association structure in order to facilitate voting on Community Association matters, and represent the interests of the owners within the Neighborhood. As provided in Article III of the Declaration, it is the responsibility of each Neighborhood Committee to determine the nature and extent of special services, if any, over and above those provided to other Neighborhoods, which are to be provided to the Neighborhood by the Community Association. A Neighborhood Committee may advise the Board on any issue, but shall never have authority to bind the Community Association.

Pursuant to section 6.3 of the By-Laws, the members of the neighborhood committee are elected by the owners within the neighborhood served by the committee. Section 3.(a) of Article III of the Amended and Reseated Declaration and General Protective Covenants for Pelican Landing, provides that the senior elected officer of a neighborhood association or neighborhood committee shall cast all votes attributable to units in the neighborhood on Association matters requiring membership vote unless otherwise provided in the Declaration or By-Laws.

Petitioner challenges the validity of the election of members of the Longlake Neighborhood Committee that occurred at the Committee's annual meeting held on March 14, 2012.¹ Petitioner also claims that the Association improperly determined that three people were duly elected to the Committee as a result of the election.

In its motion to dismiss, the Association argues that the arbitrator lacks subject matter jurisdiction over this dispute. It is undisputed that the Association is a homeowners' association (HOA) subject to Chapter 720 of the Florida Statutes. Pursuant to section 720.311(1), Florida Statutes, only disputes in involving HOA elections and recalls are eligible for arbitration.

¹ Petitioner alleges that defective proxies were accepted and that the meeting was improperly noticed.

A recall dispute occurs where the homeowners attempt to recall one or more directors of the association. Fla. Admin. Code R. 61B-80.102(1). This instant dispute is clearly not a recall dispute.

Rule 61B-80.013(2), Fla. Admin Code, defines an election dispute as follows:

Election disputes include a controversy relating to the conduct of a regular, special, or runoff election; the qualification of candidates for the board; the filling of a vacancy caused by any reason other than the recall of one or more directors of the board; and other disputes regarding an association election.

The dispute described in the petition involves the membership of a neighborhood committee, not the Association's Board. Therefore, it does not qualify as an election dispute under the rule.

Furthermore, a neighborhood committee does not qualify as a HOA. Section 720.301(9), Fla. Stat., provides:

"Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.

A neighborhood committee is not incorporated. Additionally, the Association's governing documents do not provide it with the power to impose assessments and to lien property for unpaid assessments.

The instant dispute does not involve a HOA recall or election. Therefore, it is not eligible for arbitration.

Based upon the foregoing, it is ORDERED:

Arbitration case number 2012-03-3971 is dismissed due to lack of jurisdiction.
Petitioner may seek relief in a court of competent jurisdiction.

DONE AND ORDERED this 26th day of September, 2012, at Tallahassee, Leon
County, Florida.

James W. Earl, Arbitrator
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Professional Regulation
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Final Order of Dismissal has been sent by U.S. Mail to the following persons on this 26th day of September, 2012:

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