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| <small>Department of Business and Professional Regulation</small> | |
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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2019041050

IVAN HERNANDEZ, Unit Owner
CANNONGATE PROPERTY OWNER'S ASSOCIATION, INC.

Petitioner.

DS 2019-051

**FINAL ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR
DECLARATORY STATEMENT**

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division") hereby issues this Final Order Granting In Part and Denying In Part Petition for Declaratory Statement pursuant to section 120.565, Florida Statutes.

On August 9, 2019, the Division received a Petition for Declaratory Statement ("Petition"), from Ivan Hernandez ("Petitioner"), a unit owner at the Cannongate Property Owner's Association, Inc. ("Association"). The Petition requests a declaratory statement as to the following: 1) whether the Association, which allegedly failed to timely challenge election results pursuant to section 720.306(9)(a), Florida Statutes, may contest the standing of an individual board member or association member that timely petitioned the Division to affirm the election results under the same statute; 2) whether sections 720.311 and 718.1255(5) Florida Statutes, chapter 61B-80, Florida Administrative Code, or any Division "general rule" of arbitration permits an association member to file a "derivative action" for election dispute arbitration, as argued in an unrelated arbitration matter; 3) whether the votes and actions of board members who allegedly refuse to

relinquish their board positions despite not being re-elected are legally valid when making decisions for the association; 4) whether Petitioner is entitled to an abeyance of any attorney's fees and costs levied by the Division until the conclusion of a timely filed complaint for trial de novo; and 5) whether the Division has a "legal construct" upon which it based prior dismissals of requests for declaratory statements submitted by members of homeowners associations.

On August 20, 2019, the Division confirmed receipt of the Petition in a letter sent to Petitioner. The Notice of Receipt of the Petition was published in the Florida Administrative Register on August 21, 2019. Petitioner did not request a hearing.

FINDINGS OF FACT

All of the facts presented in the Petition were duly considered, included in the record, and form the basis of this Final Order. The Division takes no position as to the accuracy of the facts and accepts them as submitted by Petitioner for the purpose of issuing this Final Order Granting In Part and Denying In Part Petition for Declaratory Statement.

1. Petitioner is a unit owner at Cannongate Property Owner's Association, Inc.
2. Petitioner is a member of the Association's Board of Directors.
3. The Association is a homeowners' association as that term is defined in section 720.301(9), Florida Statutes.
4. The Association held an election¹ in which new members were voted onto the board ("new board").

¹ The Petition fails to specify the date of the election; however, it is clear from the Petition that: (1) the election has already occurred as of the submission of the Petition; (2) the election is currently being

5. Some members of the Association's previous board of directors ("previous board") alleged this election was conducted improperly, and have not vacated their board seats. This previous board continues to conduct business as if they are members of the only duly elected board.

6. The Association's election is currently under review and consideration by the Division's Arbitration section in the ongoing arbitration case no. 2019-00-2222.

7. In that arbitration case, the Association filed a Motion to Dismiss which asserts that Petitioner lacked standing.

8. Petitioner is concerned that if his arbitration case is dismissed due to lack of standing, and Petitioner wishes to seek redress by trial de novo, he may nevertheless be required to reimburse the Association for its attorney's fees and costs at the conclusion of the trial de novo.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this Order pursuant to section 120.565, Florida Statutes.

2. Section 120.565, Florida Statutes, provides in part:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

challenged in arbitration case no. 2019-00-2222; and (3) Petitioner states the election was not challenged within sixty days.

3. Petitioner has standing to petition for a declaratory statement as a unit owner, pursuant to section 120.565, Florida Statutes.

Grounds for Denial for Questions 1, 2, and 5

Interpreting Statutes, Rules, or Orders

4. The purpose of a declaratory statement is to answer any questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Division has authority as they pertain to a petitioner's particular set of circumstances. See Fla. Admin. Code R. 28-105.001.

5. Question 1 asks the Division to evaluate whether the Association has standing to challenge an association member's petition to affirm election results, or to raise any other arguments in defense of a refusal to accept the election results.

6. Question 2 asks the Division to evaluate an argument from a separate arbitration case regarding "derivative actions."

7. Question 5 asks the Division to explain its legal reasoning for dismissing a prior Petition for Declaratory Statement.

8. Petitioner's questions 1, 2, and 5 do not request the Division's opinion on the applicability of a statutory provision, rule, or order of the Division to Petitioner's particular set of circumstances, as required by section 120.565, Florida Statutes. Accordingly, the Petition will not be granted as to these questions.

Grounds for Denial for Question 3

Ongoing Litigation

9. Question 3 asks the Division to declare the validity of actions by individuals who continue to serve as board members of the Association despite not

being re-elected. The issues raised in question 3 are currently the subject of pending litigation in arbitration case no. 2019-00-2222.

10. A declaratory statement is not an appropriate remedy where there is related pending litigation, as exists in this case. See Couch v. Fla. Dep't of Health and Rehabilitative Services, 377 So. 2d 32 (Fla. 1st DCA 1979); see also Fox v. State of Osteopathic Medical Examiners, 395 So. 2d 192 (Fla. 1st DCA 1981)(holding that it is appropriate to deny a petition for declaratory statement where issues raised are currently pending in administrative hearings).

11. Therefore, ongoing litigation precludes the Division from answering question 3.

Jurisdictional Limitation

12. Relatedly, the Division's jurisdiction over homeowners' associations is extremely limited, and includes only procedural issues pertaining to the Division's arbitration of election or recall. See § 720.302(2), Fla. Stat. Thus, the Division is unable to answer Petitioner's question 3 because it lacks jurisdiction over the homeowners' association's votes and the validity thereof.

Determination of Conduct of Another

13. Further, a declaratory statement is not the appropriate means for determining the conduct of another person. Fla. Admin. Code R. 28-105.001. The facts presented to the Division in Petitioner's question 3 pertain to the previous board members' decisions to retain their board seats and conduct themselves accordingly. The Division is unable to issue a declaratory statement in this matter as

Petitioner's question 3 seeks guidance for the determination of the conduct of another person.

Declaratory Statement as to Question 4

14. Finally, Petitioner's question 4 asks whether Petitioner is entitled to an abeyance of any attorney's fees and costs levied by the Division during the arbitration proceeding until the conclusion of a timely filed complaint for trial de novo.

15. The answer to question 4 is no.

16. Petitioner relies on Rule 61B-80.122(2), Florida Administrative Code, which states that "[a] timely filed motion for rehearing tolls the time in which a party must file to recover its costs and attorney's fees, until after disposition of the motion for rehearing or reconsideration." By its plain language, this rule only applies to motions for rehearing. Rule 61B-80.122(2), Florida Administrative Code, does not toll attorney's fees throughout a trial de novo.

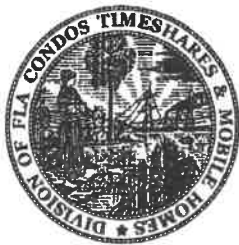
17. Accordingly, Petitioner is not entitled to a deferral of any attorney's fees and costs levied by the Division until the conclusion of a timely filed complaint for trial de novo.


[SIGNATURE PAGE FOLLOWS]

Based on the foregoing, it is hereby:

ORDERED that the Petition for Declaratory Statement is **GRANTED IN PART** and **DENIED IN PART**.

DONE and **ORDERED** this 28 day of JANUARY 2019²⁰, at Tallahassee, Leon County, Florida.




Boyd McAdams, Division Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
2601 Blair Stone Road
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 2601 BLAIR STONE ROAD, TALLAHASSEE, FLORIDA 32399-2202; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Ivan Hernandez, 4738 Alberta Avenue, West Palm Beach, FL 33417 on this 31st day of January, ~~2019~~ 2020 *EMA*

Brandon M. Nichols

Agency Clerk's Office

Copies furnished to:

Nick DuVal
Chief Attorney

Robert I. Rubin, Esq.
Becker & Poliakoff, P.A.
625 N. Flagler Drive, 7th Floor
West Palm Beach, Florida 33401

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

In re. Petition for Declaratory Statement of Ivan Hernandez

DS 2019-051

Petitioner _____

Docket # 2019041050

PETITION FOR DECLARATORY STATEMENT BEFORE THE DIVISION OF FLORIDA
CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES

Petitioner, hereby submits this Petition as pro se petitioner, for a Division's Declaratory Statement (DS) pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, and hereby declared the following statement of standing:

That Petitioner is a unit owners and member of the Board of Directors for the Cannongate Property Owners Association, Inc. (Cannongate POA or the Association), and currently maintain the following mailing addresses and contact modes:

| Name | Mailing Address | Tel. Number | Email Address |
|----------------|------------------------------------|--------------|-----------------|
| Ivan Hernandez | 4738 Alberta Ave. WPB, FL 33417 | 240-547-8173 | ihzus@yahoo.com |

That Petitioner is also a Petitioner on a mandatory binding election arbitration dispute currently proceeding (Case No. 2019-00-2222; T. Raschke, et al v. Cannongate Property Owners Association, Inc.) which is under review and consideration by the Division's assigned arbitrator. Cannongate POA, Inc. is organized under Chapter 617, Corporations Not For Profit, Florida Statute, as a Homeowners Association (HOA), and also governed by Chapter 720, Florida Statute. Petitioner need the Division's Director DS on the questions of law stated herein and that affects the arbitration petition, and/or that may affect the progression and/or disposition of the mentioned arbitration case, as they seemed currently incorrectly interpreted and applied by the

Division's Arbitrators when compared to stipulations in Florida Statutes and Court decisions on similar legal matters, or that are still unaddressed by Florida Statute or the courts, and remain dangerously ambiguous to Petitioner's legal position on their Mandatory Binding Arbitration of Election Dispute Petition (Arbitration Petition). Petitioner is not asking for the Division's Director's intervention in the mentioned case proceedings, but rather request a DS on legal matters that affect the arbitration Petition and that would be applicable in similar cases.

Petitioner have previously provided the Division with a copy of the Association's governing documents with their Arbitration Petition submission, labeled Appendix 1, and will appreciate it if the Division could also refer and use them for the purpose of this DS Petition. Petitioner seek the Division's Declaratory Statement (DS) on the following provisions of the statutes, administrative rules, and procedures of arbitration to include final orders and applicable rules that affect or have been issued by the Division:

1. Whether an association that failed to submit a Petition to the Division challenging the validity of the elections and subsequently announced results within the term limit for an election challenge in s. 720.306(9)(a), has any standing to challenge the standing of any individual association board member or any other association member's petition to the Division to affirm the newly elected board certification of the election results, or to raise any other arguments in defense of a refusal to accept the election results.
2. Whether section 720.311, or s.718.1255(5) of Florida Statute (F.S.) that addresses disputes involving election irregularities, or Chapter 61B-80 (the Division's rules for filing election dispute arbitration petitions), or any Division's "General Rule" of arbitration can delimit a right first affirmed by Florida Courts, and later conferred by the Florida Legislature (s 617.07401 FS) for derivative actions by members of corporations not for profit (like

condominium or homeowners associations), such as petitions for election dispute arbitration when the petitioners have not been directly aggrieved. This matter affects Petitioner as Association Board Members and his Petition for the Division's Arbitration of Case No. 2019-00-2222, as the Arbitrator has denied, in first round, Petitioners Motion to Dismiss Defendant's Motion to Dismiss the Petition due to Petitioners' lack of standing, predicated on Defendant's argument based on a Division Arbitration Unit's "General Rule" (see Conley v. Bayside [Case No.2018-06-2886], and other cases cited therein). Incidentally to this request, Petitioner learned that Conley's Representative filed a Motion for re-hearing, which the Division dismissed due to a late submission, but that presents legal arguments similar to those Petitioners advance herein. Petitioner respectfully request that the Division provides them a copy of such Motion for Rehearing, and that the Division addresses the legal arguments of Conley's Representative that are germane to this petition for DS.

3. Petitioner also seeks a Division's ruling or clarification as to the legality and validity of votes and actions by an Association member that was a previous Board member but was neither nominated not elected to the Board. This question affects Petitioner as Association board members, since the described situation is the reason for Petitioners request for arbitration under the Division's Case No. 2019-00-2222. The unelected outgoing members have advanced a general allegation of improper conduct of the elections proceedings as justification for their forcefully holding onto to their board seat, but neither proffered any particular allegation of wrong doing during the election process, nor challenged the election process in a Petition for Arbitration within the 60 days of election required by Florida Statute. Aided by the contractors which they had previously chosen to provide services to the association, including the Association's attorney, the hostile members have been able to

block the elected board members from taking their seat and have block access to records, funding and communication of contractors with the Directors selected by the member's elected board of Directors. Those unelected past board members have also elected members to their so called "open board seats," that are supportive of their hostile takeover effort, seats that belong in proper to the members duly elected by the membership at their last General Meeting (Nov. 2018), in accordance with the procedures of the Association bylaws.

4. Petitioner also request a decision as to the applicability of the Division's Rules of Procedure Governing Recall And Election Disputes in Homeowners' Associations at section 61B-80.122(2), to permit a deferral by a party seeking the recovery of the Arbitration's case costs and attorneys fees until after the completion of a timely file civil complain for trial de novo, similar to the deferral therein stipulated for a timely filed motion for rehearing, that tolls the time in which a party must file to recover its costs and attorney's fees until after disposition of the motion for rehearing. Based on Petitioner's reading and interpretation of current Florida Statute and the Division's administrative rule language, should the Arbitrator for Petitioner's case dismiss the Petition base on lack of standing, and if Petitioner thereafter seeks redress by trial de novo, he could nevertheless be required to reimburse the Division and Defendant's cost and attorney's fees, without having had a proper and fair Petition review and hearing by the Division.
5. Lastly, Petitioner request that your office include and addresses the Division's legal construct in support of its decisions to dismiss petitioner's request for declaratory statements (DS) from members of homeowners associations (Docket NO. 2013001883 (Turnberry Village, and presumably the others therein cited), simply stating but without the citing the legal basis that "... a declaratory Statement is a limited administrative proceeding and the Division's

authority under Chapter 720, Florida Statutes is strictly limited to arbitration of certain types of disputes....”

STATEMENT OF FACTS AND LAW – by Petition Item Number:

1. Paragraph (c), of s. 720.306(9), Florida Statute, requires that ‘...election disputes between a member and an Association must be submitted to mandatory binding arbitration with the Division...’ within the term limit for an election challenge in s. 720.306(9)(a) [60 days after the election results are announced.] The Board of Directors for the Cannongate Property Owners Association, Inc. held a General Membership Meeting on November 17, 2018 in accordance with the provisions of its governing documents. Notice of meeting was in accordance with the requirements of the Association’s By-Laws. The Notice included an agenda item calling for an Election of Directors, instructions for ‘Voting by Proxy,’ and the Proxy. The meeting was held on the date and commenced at the time previously notified, and covered thoroughly all agenda items, including the election proceedings. Afterwards, several previous board members that were neither nominated nor re-elected, claimed that the election proceedings were not legally conducted. However, neither them, individually or collectively, nor the association through its legal representative, whom has worked to support the former’s claim, petitioned the Division to arbitrate the validity of the election proceedings or the results, within the term limit required by s. 720.306(9)(a) Florida Statute for an election challenge, per s. 720.306(9)(c). Therefore, Respondents have abandoned their right to challenge the election. Nevertheless, the Director of the Division’s Arbitration unit has allowed the Association’s legal representative to raise all kind of technicalities to try and get

the Petition dismissed without addressing the matter of validation of the election process and certification of its results.

2. Concerning the Division's Arbitrators use of a "General Rule" to determine Petitioners lack of standing and dismissed their election arbitration petitions where petitioners have been found not aggrieved or harmed by the association's action, neither section 720.311, nor s. 718.1255(5) of Florida Statue that addresses disputes involving election irregularities, nor Chapter 61B-80 (the Division's rules for filing election dispute arbitration petitions) delimits the right of members to file an election dispute petition. In fact, Section 61B-80.106(3) specifically says that "Parties in an election dispute shall be involved homeowners and the association." Moreover, the Division has applied the so called "General Rule" in disregard of Sec. 617.07401 Florida Statue that permits members of Not-for-Profit Corporation to initiate suit for the benefit of the entity in general (a derivative action). Although Petitioner could not find any Florida Court cases directly addressing the matter of HOA members direct vs. derivative actions, in Marianne FOX, et al., v. PROFESSIONAL WRECKER OPERATORS OF FLORIDA, INC.(Case No. 5D00-3332; Fla. 5th DCA Nov. 30, 2001), the District Court of Appeal of Florida for the Fifth District elaborated on the distinction between a Derivative cause of action on behalf of the Membership (Association) of a Not For Profit Corporation, versus a Direct cause of action on behalf of a stockholder [owner] to enforce a right of action that exists on behalf of the stockholder individually. Additionally, the Court reasoned as follows:

"Because at common law the directors of a private corporation are considered by equity to be in a fiduciary relationship with the corporation and its shareholders, 3 Fletcher, Cyclopedia of Corporations, § 838 at 142 (1975 rev.), and because the right to assert a claim for the tort

of breach of fiduciary duty derives from the common law, see, e.g., *Batas v. Prudential Ins. Co. of America*, 281 A.D.2d 260, 724 N.Y.S.2d 3 (2001); *Viruet v. Rubin*, 181 Misc.2d 535, 695 N.Y.S.2d 487 (Sup.1999); *Bohatch v. Butler & Binion*, 905 S.W.2d 597 (Tex.App.1995), *aff'd*, 977 S.W.2d 543 (Tex.1998), we agree with the conclusion reached in *Larsen* [*Larsen v. Island Developers, Ltd.*, 769 So.2d 1071 (Fla. 3d DCA 2000), *rev. denied*, 789 So.2d 346 (Fla.2001){added}], that the purpose for which a corporation is formed (profit versus nonprofit) is immaterial. Therefore, we hold that the members of either type of corporation should be treated equally and be allowed to bring a derivative action against the directors for perceived breaches of fiduciary duty.”

There are several Florida court cases addressing the matter of members Not For Profit corporations derivative v. direct actions that provide stipulations and criteria to distinguish them, and that HOA & Condo law practitioners have interpreted as germane to the ownership of a unit (a stockholder share) on a development governed by an HOA, drawing from the similar relationship and inherent duties of corporate board members and general members (shareholder) also present at HOAs. Specifically, the third Florida District court of appeal case of *Dinuro Investments, LLC v. Camacho* (141 So. 3d 731; Fla 3d DCA 2014) is considered the landmark case in Florida for establishing the distinction and determine if a member action is for individual (personal) or derivative (corporate) benefit. The three tests that the court noted in *Dinuro* were later reaffirmed by the fourth district of Florida DCA (*Strazzulla, et al v. Riverside Banking Co.*, No. 4D14-768, Fla 4d DCA 2015) and have been routinely applied by other courts. Based on the *Conley v. Bayside* case and the Arbitration cases cited therein, it is apparent that Arbitrators have not attempted to apply the three test criteria or determine the distinction of Petitioners with Direct v. Derivative claims for

election disputes.

As this Petitioner initially mentioned, based on applicable laws and rules, the criteria seems irrelevant to Arbitration Petitions for elections disputes. Nevertheless, the three rules discussed by the court in *Dinuro*, when applied to the *Conley v. Bayside Arbitration* case, any other prior or thereafter, would clearly dictate that members Petitions for Arbitration of election disputes are derivative actions permitted by Sec. 617.07401 Florida Statute, reaffirmed and clarified by court case Jurisprudence, and that a Division's administrative rule or order (a General Rule), inclusive those of the Division's Arbitrators, cannot override.

Therefore, the Division Arbitrators have erred in deciding to dismiss HOA members' petitions for arbitration of election disputes due to lack of standing, where there has been no personal injury to Petitioners, as their Petition were for a derivative cause. Moreover, to try an advance what has been an erred general practice as a Division Arbitration Unit's "General Rule" is also contrary to the Division Director's opinion under Declaratory Statement (DS 2007-028) that an arbitrator's decisions are a mere single decision and are not consider final agency actions [Florida Statute S,718.1255(4)]. Therefore, the Division's Arbitrators are also incorrect in using the term "General Rule" to refer to a pattern of similar decisions, drawing one upon another, as each Arbitrator's decision stands individually. Arbitrators can look back to prior arbitration cases for guidance in final order determinations but their use of the term "General Rule" should be eliminated from final orders, as it is suggestive of a Jurisprudence process that does not exist in fact, as Arbitrators' Final Orders are neither subject to court appeals or the Fla. Administrative Procedures Act.

3. Petitioner is aware of the Division's discussion and decisions under Declaratory Statement DS 2207-028, that the votes and actions of ineligible members elected incorrectly are valid and binding on the Association, until those members have been replaced. However, Petitioner did not find any DS addressing the validity of votes and actions of not elected members that takeover or hold onto board director position and duties in wanton and willful disregard of the results of a general members' election of board member, particularly when neither such willfully acting members, nor the Association, have challenge the election's results within the statute of limitation required by Florida Statute (60 days off election date).
4. Section 61B-80.122(2) permits the Division to grant a deferral by a party otherwise entitled to recover Arbitrations case costs and attorneys fees, and for the Division's assessed Arbitration cost, until after the completion of a timely file Motion for Petition Rehearing. Petitioner submit for the Division's consideration that limiting or denying the application of the fee and cost deferral provision for Arbitration Parties that seek redress by trial de novo places HOA unit members at a financial disadvantage, substantially more so that the Association. Although listed under paragraph 1 of Section 718.1255(4), Mandatory Nonbinding Arbitration and Mediation of Disputes and not under 718.248(5), Disputes Involving Election Irregularities, Paragraph 1 can be interpreted as allowing the deferral of arbitration costs payment of the party who files a complaint for a trial de novo. Additionally, the State's financial resources are far superior to those of HOA unit owners, so that the Division would not be harmed by a recovery deferral. Particularly, in the case of a Petition dismissal for a legal technicality and without a hearing on the allegations of the Association's wrongdoings, unit owners are an unfair financial disadvantage to seek such trial de novo redress if required to paid arbitration costs prior to the conclusion of the de novo trail.

Therefore, Petitioner respectfully requests that the Division proposes rules for such cost and fee payment deferrals within their current authority, in order to address the HOA members' inequality of financial capacity to access the courts, or that it requests such authority from the Florida legislature if the Division interprets in response to this request for Declaratory Statement that it does not currently have it.

5. The DS for Turnberry Village (Docket NO. 2013001883) in the Division's website, cites two other declaratory statements that were not listed on its website (Trail West HOA; Docket No. 2018006595 & Village Facility Services; Docket NO. 2018008816), in what appears as a circular reference to the same statement the Division advanced in the DS for Turnberry ("...a declaratory Statement is a limited administrative proceeding and the Division's authority under Chapter 720, Florida Statutes is strictly limited to arbitration of certain types of disputes....") Petitioner research of the matter did not reveal any Florida Legislature conferred exemption to the Division from the requirements of S. 120.565 F.S., or that the Division requested/processed, using the procedures at S. 120.63 F.S., for instituting a rule based on such narrowly and non-statute based interpretation. In fact, the Supreme Court of Florida stated the contrary opinions, as Follows:

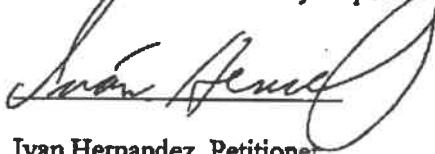
- a. "The citizen has a right under the statute. The point is that in enacting section 120.565, the Legislature created an important tool to vindicate the individual rights of individual citizens. Chiles, 711 So.2d at 154. "[A] declaratory statement is not transformed into a rule merely because it addresses a matter of interest to more than one person." It renders the statute nearly useless to say, as the majority does, that the agency cannot issue a declaratory statement if it will impact on anyone other than the petitioner. Dore, supra, at 1061. "Agencies are required to give declaratory

statements to persons who meet the minimum access standard" 120.565(3), Fla. Stat. (Supp.1996). See § The citizen not only has a right to an answer, but also a right to an answer within a time certain: ninety days.' to get a clear, binding answer from the agency on how the agency's statute and rules apply to that individual citizen." Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach case (93,952. No.)

and

- b. "[T]his Court has repeatedly recognized that it is inappropriate to give a statute a literal interpretation that would produce unreasonable or ridiculous results. (p7) [and] ...this court has recently reiterated longstanding case law when it stated that it would not give a statute a literal interpretation that would produce an unreasonable or ridiculous result (p19)." Department of Revenue v. Florida Municipal Power et al. (Case No. SC00-1916)

This Petition for DS is hereby respectfully submitted by;



Ivan Hernandez, Petitioner