

**FAX COVER SHEET**

**To**

**GLENN LANG  
SENIOR ATTORNEY  
DBPR  
ARBITRATION SECTION**

Filed with  
Arbitration Section

DEC 20 2016

Div. of FL Condos, Timeshares & MH  
Dept. of Business & Professional Reg

**FAX #: 850-487-0870**

**FROM: EPHRAIM MARTIN, VILLAGE OF RIO PINAR  
MEMBER**

FAX

To Glenn Lang, Senior Attorney FAX 850 487 0870  
DBPR  
Arbitration Section

Filed with  
Arbitration Section

From Ephraim Martin, Villages of Rio Pinar Member

DEC 20 2016

Re Villages of Rio Pinar vs Homeowners Voting for Recall  
Fee Case No 2016-04-8524  
Rel Case No 2016-02-1948

Div. of FL Condos, Timeshares & MH  
Dept. of Business & Professional Reg

The response to Motion for attorneys fees to Prevailing Party allegedly sent to you by Fax on 7 December 2016 by Saydah law firm contains statements which are believed to be false. I learned of this filing by seeing it posted on social media. Specifically The RESOLUTION listed as ATTACHMENT A was never forwarded to the Association or to Ephraim Martin or Thomas Dougherty. So states the Association Attorney at the time. Martin and Dougherty were acting under the legal guidance of the Association Attorney and following the professional guidance of the Management Company. Martin and Dougherty made no legal filings on their own behalf and were at no time advised that they were not the Board prior to 30 September 2016. In fact The Association Attorney advised that Martin and Dougherty were the only valid board members and The Management Company concurred with this finding and a second Association Attorney also so advised.

Further there are more facts not made available to the arbitrator prior to the 30 September finding which could have impacted the decision which are as follows. Jason Alday, Dave Mau and Tom Allen were never elected prior to the 30 November 2015 meeting. They were appointed by the four elected directors in 2013, and 2014 for one year terms to expire at the next annual meeting. The Management Company advised that their appointments were for one year and expired every year at the annual meeting. We were advised that if the elected Board members wanted them to remain on the Board they had to be re appointed. We were then further advised that people who did not submit intent to run as was the right of the board by association documents to make election requirements also were not automatically on the Board and had to be appointed.

Also please consider our association documents which state that the following.

16. Indemnification of Officers and Directors. The Association shall and does hereby indemnify and hold harmless every Director and every Officer, their heirs, executors and administrators, against all loss, cost and expenses reasonably incurred in connection with any action, suit or proceeding to which such Director or Officer may be made a party by reason of being or having been a Director or Officer of the Association, including reasonable counsel fees and paraprofessional fees at all levels of proceeding. This Indemnification shall not apply to matters wherein the Director or Officer shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such Director or Officers may be entitled.

I have requested representation in writing to the HOA and none has been provided. All of my actions related to this case were under the legal and professional guidance from two association lawyers and the Management Company telling me that I was a Board member.

I direct your attention to: Woodfield Crossing Property Owners Case 2015 WL 3993294 and , Ethel Tark Case 2000 WL 34475829 which are included in this fax. Based on these cases I ask that no fees be awarded. If you cannot find that no fees should be awarded at this time I ask for an extension until 15 January as I am unable to obtain counsel due to the time of year.

**Regards**

**/s/ Ephraim Martin  
Ephraim Martin**

**ETHEL TARK, Petitioner, v. THE FALLS OF INVERRARY..., 2000 WL 34475829...**

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**ETHEL TARK, Petitioner, v. THE FALLS OF INVERRARY..., 2000 WL 34475829...**

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2000 WL 34475829 (Fla.DBPR Arb.)

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: REQUEST FOR EXPEDITED DETERMINATION OF JURISDICTION

ETHEL TARK, Petitioner,

v.

THE FALLS OF INVERRARY CONDOMINIUMS, INC. and DAVID KAMINSKY, Respondents.

**ORDER ON JURISDICTION**

Case No. 00-0968

June 13, 2000

Case Type: Real Estate

Award Amount: \$0.00

Award Date: June 13, 2000

Arbitrator: Patricia A. Draper, Arbitrator

**ORDER ON JURISDICTION**

\*1 Ethel Tark (petitioner) filed a request for an expedited determination of jurisdiction on May 30, 2000, naming The Falls of Inverrary Condominiums, Inc. and David Kaminsky as respondents. A copy of the request was provided to the respondents for their response on the issue of jurisdiction, and a response was filed on June 9, 2000 by fax.

The request alleges that the petitioner was deeded a one-half interest to a unit in the condominium, and that the association and its president, David Kaminsky, denied her access to the unit. The request further alleges that the association failed to approve her application for approval of the transfer of the unit, and that the respondents have asserted to others that the petitioner does not have title to the unit. The petitioner requests an order requiring respondents to formally acknowledge the petitioner as a resident of the condominium, and awarding the petitioner damages, including punitive damages.

This dispute originally was filed in circuit court in 1997. In the circuit court complaint, the petitioner alleged assault and intentional infliction of mental distress, misrepresentation and fraud as to petitioner's title to the unit, and defamation. By order of March 23, 1998, the court abated the bulk of the petitioner's claims (the court retained jurisdiction over Count IV pertaining to injunctive relief), and determined that the Division of Florida Land Sales, Condominiums and Mobil Homes had jurisdiction of the rest. By order of April 20, 2000, the court reiterated its determination by denying the plaintiff's motion to vacate the order abating the action.

At the outset of this case, the arbitrator noted that jurisdiction was questionable because the disagreement appeared to involve title to a unit, sought relief against an individual board member, and requested punitive damages. The

association argues in its response to the request for expedited determination of jurisdiction that title is not an issue, and that approval was denied by the association because of several previous incidents involving the petitioner. The association's failure to approve an application for occupancy of a unit, or to otherwise refuse to permit a unit owner to utilize his or her unit in a particular fashion, is an issue over which the arbitrator has jurisdiction. See Smith v. Edgewater Condominium Association, Inc., d/b/a/ Edgewater Beach Towers Condominium, Arb. Case No. 94-0216, Arbitration Final Order Determining Liability (Jan. 12, 1995) (arbitrator had jurisdiction over issue of whether association's failure to approve lease/purchase of unit was reasonable). Therefore, the arbitrator has jurisdiction over at least this portion of the dispute, as well as the authority to award compensatory damages pertaining to this issue.

The petitioner asserts her claim against the association as well as David Kaminsky, association president. Disputes required to be arbitrated pursuant to Section 718.1255, Florida Statutes, are those involving unit owners and associations. The arbitrator does not have jurisdiction over claims against individual board members. See Osinski v. Bayview Terrace Condo. Assn., Inc., Arb. Case No. 92-0289, Order Determining Proper Respondents (December 4, 1992) (board members either individually or in their official capacity not proper parties under Section 718.1255, Florida Statutes, providing for arbitration of disputes between unit owners and associations). Therefore, any petition filed by Tark should not name Kaminsky as a respondent.

\*2 Nor does the arbitrator have authority to award punitive damages. See The Trails at Royal Palm Beach, Inc. v. Wargovich, Arb. Case No. 93-0320, Order on Respondent's Motion for Damages (February 8, 1995) (arbitrator lacked authority to grant punitive damages on counterclaim of handicapped unit owner). Thus, any petition filed by Tark should not request an award of punitive damages.

Accordingly, it is determined that the arbitrator has jurisdiction over the parties' disagreement over the association's failure to approve the petitioner's membership in the association and residence in the condominium, however, she would not be able to award punitive damages against any party or to award relief against David Kaminsky individually.

Based on the foregoing, it is ORDERED:

Jurisdiction over the disagreement is determined as set out above. A petition complying with the provisions with the foregoing may be filed no later than June 27, 2000.

DONE AND ORDERED this 13th day of June 2000, at Tallahassee, Leon County, Florida.

Patricia A. Draper, Arbitrator  
Department of Business and Professional Regulation  
Arbitration Section  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

2000 WL 34475829 (Fla.DBPR Arb.)

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WOODFIELD CROSSING PROPERTY OWNERS'.... 2015 WL 3993294...

2015 WL 3993294 (Fla.DBPR Arb.)

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES  
 IN RE: PETITION FOR BINDING ARBITRATION - HOA RECALL  
 WOODFIELD CROSSING PROPERTY OWNERS' ASSOCIATION, INC., Petitioner,

v.

HOMEOWNERS VOTING FOR RECALL, Respondent.

**FINAL ORDER ON MOTION FOR AWARD OF ATTORNEY'S FEES & COSTS**

F. Case No. 15-01-8725

R. Case No. 14-05-2856

May 6, 2015

Case Type: Real Estate

Award Amount: \$0.00

Award Date: May 6, 2015

Arbitrator: James W. Earl, Arbitrator

**FINAL ORDER ON MOTION FOR AWARD OF ATTORNEY'S FEES & COSTS**

\*1 On April 21, 2015, Respondent, the homeowners voting for recall, moved for an award of attorney's fees and cost in the amount of \$8,820.85. This fees case arises from arbitration case number 2014-05-2856.

In the underlying case, the Woodfield Crossing Property Owners' Association, Inc. (the Association) filed a petition for mandatory binding arbitration of a recall dispute after the Association chose not to certify a written recall agreement that it had received. On April 8, 2015, a Summary Final Order was entered certifying the recall and removing all of the board members that were the target of the recall.

In *Planter's Walk Homeowner's Ass'n v. Homeowners Voting for Recall*, Arb. Case Number 2005-05-3848, Final Order on Attorney's Fees and Costs (February 20, 2006) the arbitrator held that prevailing party attorney's fees and costs are not available to an association in a recall arbitration brought pursuant to sections 720.303(10) and 720.311(1), Florida Statutes. In *Coconut Key Homeowners Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Case No. 2009-02-2065, Order Denying Motion For Attorney's Fees (April 30, 2009), the arbitrator denied the respondent homeowners' motion for attorney's fees noting:

In this type of case, arbitrators have consistently denied the motion for attorney's fees and costs pursuant to *Planter's Walk Homeowner's Ass'n v. Homeowners Voting for Recall*, Arb. Case No. 2005-05-3848 (February 20, 2006). Although most cases following *Planter's Walk* deny fees to an association, the law requires that the potential entitlement to fees be the same for both sides in litigation. Because the prevailing party in a recall controls the association, there is no need for an order telling the association what to do.

The undersigned will follow the holding of *Planter's Walk* and the line of arbitration cases denying attorney's fees in recall cases brought pursuant to sections 720.303(10) and 720.311(1), Florida Statutes.

Based upon the foregoing, it is ORDERED:

Respondent's Motion For Award of Attorney's Fees and Costs is denied.

**WOODFIELD CROSSING PROPERTY OWNERS' ..., 2015 WL 3993294...**

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DONE AND ORDERED this 6<sup>th</sup> day of May, 2015, at Tallahassee, Leon County, Florida.

James W. Earl, Arbitrator  
Department of Business and Professional Regulation  
Arbitration Section  
1940 North Monroe Street  
Tallahassee, Florida 32399-1030

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2015 WL 3993294 (Fla. DBPR Arb.)

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