

**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

**Villages of Rio Pinar
Community Association, Inc.,**

Petitioner,

v.

**Fee Case No. 2016-04-8524
Rel. Case No. 2016-03-1948**

Homeowners Voting for Recall,

Filed with
Arbitration Section

Respondent

JAN - 3 2017

James V. Rowell

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

Petitioner,

v.

**Fee Case No. 2016-04-8524
Rel. Case No. 2016-03-2689**

**Villages of Rio Pinar
Community Association, Inc.,**

Respondent.

**NOTICE OF COMMUNICATION AND
FINAL ORDER ON MOTION FOR ATTORNEY'S FEES AND COSTS**

Notice of Communication

On December 20, 2016, Ephraim Martin filed, via facsimile, a memorandum, with attachments, consisting of seven (7) pages.¹ There is no indication that a copy was provided to the attorney for any party, therefore a copy is enclosed for the attorneys. “[E]very pleading or other paper filed in the proceedings... shall also be served on each

¹ Ephraim Martin was one of the targets of the recall. The filing did not include a return mailing address, a return fax number or an email address.

party,” and all pleadings and motions shall contain a certificate of service attesting that copies have been sent. Fla. Admin. Code R. 61B-45.010(1),(6). Ephraim Martin failed to comply with this rule.

The purpose of the rule is to ensure that no *ex parte* communications are received by the undersigned and that each party has a complete record of all documents filed in the case. Of course, it also is necessary to allow the parties to respond to motions or other pleadings in a timely fashion. Every document filed must contain a certificate of service, stating that a copy has been provided to the opposing parties and the date and method by which it was provided. Because it does not appear that the document was provided to counsel, a copy of the document is attached to this notice and order for counsel. Moreover, because Ephraim Martin is not a party in this fee case, his filing will be stricken.

Final Order

On October 14, 2016, James V. Rowell, the petitioner in Rel. Case No. 2016-03-2689, filed a motion to recover attorney's fees and costs.² On October 20, 2016, counsel for Villages of Rio Pinar Community Association, Inc. (the Association) filed a Motion to Withdraw. On October 24, 2016, an Order Acknowledging Withdrawal of Counsel was entered; the Order acknowledged the withdrawal of counsel for the Association. On November 16, 2016, an Order Permitting Response was entered.

On December 7, 2016, new counsel for the Association filed a response to the Motion for Attorney's Fees and Costs asserting that the Association is not liable for attorney's fees and costs and arguing that an award of fees and costs should be

² On November 16, 2016, a Final Order on Motions for Rehearing was entered in the related consolidated cases.

entered against Ephraim Martin and Thomas Dougherty. The allegations in the response relate to the underlying petition and the actions of Ephraim Martin and Thomas Dougherty leading up to its filing, therefore the response is treated as an untimely motion for rehearing of the Summary Final Order.³

On June 30, 2016, the Association filed its Petition in Arb. Case No. 2016-03-1948. On November 16, 2016, a *Second Corrected Summary Final Order Nunc Pro Tunc* was entered certifying the recall of Ephraim Martin and Thomas Dougherty.

Because the Association timely filed its Petition on June 30, 2016, the Petition filed by James V. Rowell in Arb. Case No. 2016-03-2689 was rendered a nullity. Prior arbitration cases have consistently held that attorney's fees and costs are not recoverable in homeowner's association recall arbitration cases. *Foxcrest Homeowners Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Fee Case No. 2015-03-6146, Final Order on Petitioner's Motion for Award of Attorney's Fees (Aug. 20, 2015)(citing *Tumberry Reserve Homeowners Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Fee Case No. 2012-01-620, Final Order on Motion for Attorney's Fees and Costs (April 4, 2012); *Sugar Hill Plantation Homeowner's Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Fee Case No. 2011-02-8967, Final Order on Motion for Attorney's Fees and Costs (June 9, 2011); *Vision/Homeowners Ass'n, Inc. v. Owners Voting for Recall*, Arb. Fee Case No. 2009-02-4282 Final Order on Motion for Attorney's Fees and Costs (July 9, 2009); *Villas of Windmill Point II Property Owners Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Fee Case No. 2006-06-3008, Final Order on Motion for Attorney's Fees and Costs (March 12, 2007); *Planter's Walk Homeowners, Ass'n, Inc. v. Homeowners*

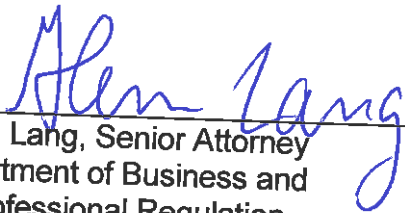
³ See Fla. Admin. Code R. 61B-80.122. The Summary Final Order originally was entered on September 30, 2016.

Voting for Recall, Arb. Fee Case No. 2005-05-3848, Final Order on Attorney's Fees and Costs (Feb. 20, 2006). Accordingly, it is

ORDERED:

1. The December 20, 2016 filing by Ephriam Martin is stricken from the record.
2. The motion to recover attorney's fees and costs filed by James V. Rowell, the petitioner in Rel. Case No. 2016-03-2689, is DENIED.
3. The Association's motion for an award of fees and costs against Ephraim Martin and Thomas Dougherty is DENIED.

DONE AND ORDERED this 3rd day of January, 2017, at Tallahassee, Leon County, Florida.



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Trial de Novo

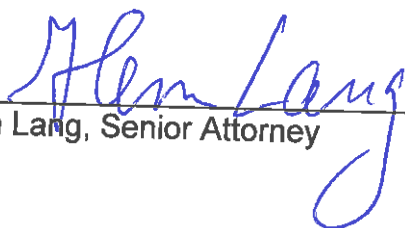
This decision shall be binding on the parties unless a complaint for trial de novo is filed in accordance with section 718.1255, Florida Statutes.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile, by email and by U.S. Mail and to the following persons on this 3rd day of January, 2017:

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03-1948 and Petitioner in Case No.
2016-03-2689



Glenn Lang, Senior Attorney