

**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.

Case No. 2016-03-1948

Homeowners Voting for Recall,

Respondent

Filed with
Arbitration Section

James V. Rowell

NOV 16 2016

Petitioner,

v.

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

Case No. 2016-03-2689

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

Respondent.

_____ /

FINAL ORDER ON MOTIONS FOR REHEARING

On September 30, 2016, a Summary Final Order was entered. Thereafter, on the same day, a *Corrected* Summary Final Order was entered.

On October 14, 2016, James V. Rowell (Rowell), Petitioner in Arb. Case No. 2016-03-2689, filed the following in a single document:

1. Motion for Amendment to Certain Errors of Fact in the *Corrected* Summary Final Order
2. Motion for Ruling on the Recall Committee's Emergency Motion and Request for Clarification
3. Motion for Attorney's Fees and Costs to Prevailing Party

By Order entered on October 19, 2016, the undersigned determined that Rowell's

Motion for Amendment to Certain Errors of Fact in the *Corrected* Summary Final Order and Motion for Ruling on the Recall Committee's Emergency Motion and Request for Clarification would be considered motions under Rule 61B-80.122, Florida Administrative Code.

In pertinent part, Rule 61B-80.122 provides:

(1) Any party may file a motion for rehearing or a motion to correct any clerical mistake or error arising from oversight or omission in any final order entered by an arbitrator within 15 days of the date on which the order was entered. "Clerical corrections" shall be generally defined as computational corrections, correction of clerical mistake or typographical error or other minor corrections of error arising from oversight or omission; or an evident miscalculation of figures or an evident mistake in the description of any thing, person, or property referred to in the order; or an award by the arbitrator upon a matter not submitted. A motion for rehearing shall state with particularity the points of law or fact that the arbitrator has overlooked or misapprehended but shall not re-argue the merits of the final order. Any response shall be filed within 10 days of service of the motion.

As of the date of this final order, the Villages of Rio Pinar Community Association, Inc. (the Association) has not filed a response to the Motion for Amendment to Certain Errors of Fact in the *Corrected* Summary Final Order and the Motion for Ruling on the Recall Committee's Emergency Motion and Request for Clarification.

Motion for Amendment to Certain Errors

The Motion alleges four errors of fact. They are addressed below.

1. Date of filing the original petition in Arb. Case No. 2016-03-1948

The *Corrected* Summary Final Order identifies the date of filing the original petition as July 5, 2016, which is the date the petition reached the Arbitration Section, and is date-stamped as such. However, the Order Requiring Amended Petition and Filing entered on July 21, 2016, required the Association to file, "A copy of counsel for

the Association's FedEx receipt showing when the original petition was delivered to the Department of Business and Professional Regulation." In response, the Association filed a copy of its "FedEx Billing Online" which under the heading "Proof of Delivery" shows the packet containing the original petition was delivered to the Department on June 30, 2016. June 30, 2016 is within the five business-day window under Section 720.303(10)(d), Florida Statutes, and Rule 61B-80.102(6) and 81.003(3)(b)1., Florida Administrative Code, to file the recall petition after the June 24, 2016 meeting to address the recall. Therefore, a *Second Corrected* Summary Final Order will be entered substituting June 30, 2016, for July 5, 2016, as the date of filing the original petition in Arb. Case No. 2016-03-1948.

2. Other Alleged Errors

The Motion alleges three other errors of fact each of which can be summarized as follows: 1. Cases addressed at the July 15, 2016 case management conference; 2. Time to file Amended Petition; and 3. Time of filing documents required by September 22, 2016 Order After Case Management Conference.

The first alleged error turns on the first two paragraphs under the heading "Relevant Procedural History" in the *Corrected* Summary Final Order. Those two paragraphs read as follows:

On July 5, 2016, the Association filed its petition in Arb. Case No. 2016-03-1948. On July 11, 2016, the Association remitted the remaining \$150.00 of the filing fee.

On July 11, 2016, James V. Rowell (Petitioner Rowell) filed a petition which was assigned Arb. Case No. 2016-03-2689. On July 15, 2016, a Case Management Conference (CMC) was held with counsel for both parties attending.

The Motion interprets the foregoing to state that only Arb. Case No. 2016-03-2689 was

addressed in the July 15, 2016 Case Management Conference. Such an interpretation inserts words that are not on the page. Therefore, a point of law or fact has not been overlooked or misapprehended, therefore this allegation of error will be denied.

With respect to the time to file the Amended Petition, counsel argues that granting the Association 10 days to file the Amended Petition was "to the detriment of the homeowners voting for recall." However, the Motion does not argue what the detriment was to the homeowners voting for recall. Therefore, this allegation of error of fact is without merit and will be denied.

With respect to the time of filing documents required by the September 22, 2016 Order After Case Management Conference, counsel argues that the Association's three-day delay in filing its response to the Order and the undersigned's failure to so state in the *Corrected* Summary Final Order "is evidence of yet another issue that caused Mr. Rowell to spend funds and proceed with discovery in anticipation of filings to resolve the inequities against the homeowners for recall." It must be remembered that counsel filed an Answer to the Amended Petition in Arb. Case No. 2016-03-1948 on August 1, 2016. The Motion does not explain how the three-day delay caused Mr. Rowell to spend funds and proceed with discovery. In any event, there was no prior approval for discovery as required by Rule 61B-80.115(1), Florida Administrative Code. Therefore, this allegation of error of fact is without merit and will be denied.

Motion for Ruling on the Recall Committee's Emergency Motion and
Request for Clarification

With respect to these two matters, the Motion for Rehearing is rearguing the merits of the *Corrected* Summary Final Order. Under Rule 61B-80.122 such re-argument is impermissible, therefore these grounds for rehearing must be denied.

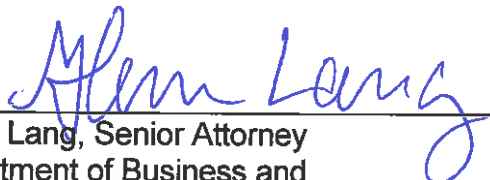
Accordingly, it is

ORDERED:

1. The date of filing the original petition in the *Corrected* Summary Final Order is corrected to June 30, 2016, and a *Second Corrected* Summary Final Order will be entered to reflect that date.

2. All of the remaining grounds for rehearing are DENIED.

DONE AND ORDERED this 16th day of November, 2016, at Tallahassee, Leon County, Florida.



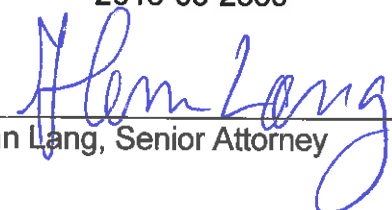
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile, where available, email, where available, and U.S. Mail, postage pre-paid, to the following persons on this 16th day of November 2016:

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



Glenn Lang, Senior Attorney

¹ Please note the change of street address.