

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

**IN RE: PETITION FOR HOMEOWNERS ASSOCIATION – ELECTION DISPUTE**

Arbitration Section

**ANDREA SCHMIDT, JUAN JOSE COMAS,  
LUCAS DE CASTELLI, PEDRO VEGANZONES,  
GINO DE ABREU, JORGE MEJIA, AND  
SANTIAGO M. DELIA,**

MAY 13 2025

Div. of FL Condos, Timeshares & Mobile Homes  
Dept. of Business & Professional Regulation

**Petitioners,**

**v.**

**Case No. 2025-00-3433**

**DORAL ISLES COMMUNITY ASSOCIATION, INC.**

**Respondent.**

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**SUMMARY FINAL ORDER**

**Issue**

Was the Association's December 11, 2024, annual election conducted in accordance with the requirements of the Association's governing documents and Florida Law.

**Procedural History**

On January 14, 2025, Andrea Schmidt, Juan Jose Comas, Lucas De Castelli, Pedro Veganzones, Gino De Abreu, Jorge Mejia, and Santiago M. Delia (the "Petitioners"), filed a Verified Binding Arbitration Petition – Election Dispute against Doral Isles Community Association, Inc. (the "Association"), challenging the Association's annual election held on December 11, 2024. Petitioners assert that the election was conducted in violation of the Association's governing documents and Florida law. Specifically, Petitioners allege that the Association improperly conducted the December 11, 2024, election by failing to properly count all of the proxy ballots submitted by

community owners at the election, and failing to adopt the corrective action taken by Association Counsel to correct the error made on December 11, 2024.

On January 17, 2025, an Order Requiring Answer was issued. The Association was served on January 22, 2025, with the Association's Answer due on February 11, 2025. On February 11, 2025, Respondent's Motion for Extension of Time to File Answer was filed. On February 12, 2025, an Order Granting Extension to File Answer, In Part was issued.

On February 24, 2025, Respondent's Motion to Dismiss was filed. On February 25, 2024, Petitioners filed a Motion for Default. On February 26, 2025, an Order to Show Cause, Order Requiring Answer, and Order Requiring Response to Motion to Dismiss was issued. On March 10, 2025, Petitioner's Response in Opposition to Respondent's Motion to Dismiss was filed. On March 11, 2025, the Association's Answer to Petition for Arbitration was filed.

On March 18, 2025, an Order Denying Respondent's Motion to Dismiss and Requiring Response to Answer was issued. On March 27, 2025, Petitioner's Response to Respondent's Answer to Petition for Arbitration was filed. On April 16, 2025, Petitioner's Motion for Case Management Conference was filed. On May 2, 2025, an Order Denying Petitioners' Motion for Case Management Hearing was issued.

#### Findings of Fact

1. Petitioners are the owners of property within the Association, and by such ownership, are members of the Association.
2. The Association is the corporate entity responsible for the operation of the Doral Isles Community.

3. On December 4, 2025, the Association provided Petitioner Juan Jose Comas with a Proxy Receipt for the December 11, 2024, Annual Meeting and Election. The Proxy Receipt provided that the Association acknowledged that it received 141 proxies from Mr. Comas, the proxy holder. After evaluation of the proxies the Association determined that 141 proxies were submitted, 10 proxies were disqualified, leaving 131 eligible proxies for the December 11, 2024, annual election. The Association subsequently provided Petitioner with an amended Proxy Receipt for the December 11, 2024, Annual Meeting and Election where the number of proxies disqualified was increased to 12 and the total number of eligible proxies was reduced to 129.

4. On December 11, 2024, the Association conducted its Annual Meeting and Election for seven Board Members.

5. The election ballot submitted by Petitioner Comas (the "Comas Ballot") reflected that 129 proxy votes were cast for the following candidates:

Name

1. Juan Jose Comas
2. Gino De Abreu
3. Lucas Decastelli
4. Santiago M. Delia
5. Jorge Mejia
6. Andrea Shhmidt
7. Pedro Veganzones

A "Note:" on the ballot confirms "129 by Green Team identified to Juan Comas on proxy confirmations." Sixteen additional proxy ballots were submitted by other members of the Association using the same ballot form, in the same format with the same "Note" on each ballot as stated on the Comas Ballot confirming the number of votes eligible to be cast by each ballot with a hand-written number circled in the bottom right hand corner of the ballot

confirming the number of ballots stated in the Note. For clarity a copy of the Comas Proxy Ballot is incorporated in this Order below.

**DORAL ISLES COMMUNITY ASSOCIATION, INC. ("Association")**

**ELECTION BALLOT - DECEMBER 11, 2024**

I hereby cast my vote for the following candidates to the Board of Directors of the Association.  
**VOTE FOR UP TO SEVEN (7) CANDIDATES. WHILE YOU MAY VOTE FOR FEWER THAN SEVEN (7) CANDIDATES, YOUR BALLOT WILL BE VOID IF YOU VOTE FOR MORE THAN SEVEN (7) OF THE FOLLOWING:**

- |     |                                     |                        |
|-----|-------------------------------------|------------------------|
| 1.  | <input type="checkbox"/>            | BEAUCHAMP, LIZBETH     |
| 2.  | <input type="checkbox"/>            | BURNET, LAURENCE       |
| 3.  | <input checked="" type="checkbox"/> | COMAS, JUAN JOSE       |
| 4.  | <input checked="" type="checkbox"/> | DE ABREU, GINO         |
| 5.  | <input checked="" type="checkbox"/> | DECASTELLI, LUCAS      |
| 6.  | <input checked="" type="checkbox"/> | DELIA, SANTIAGO M.     |
| 7.  | <input type="checkbox"/>            | LOSADA, JESSICA ROMERO |
| 8.  | <input checked="" type="checkbox"/> | MEJIA, JORGE           |
| 9.  | <input type="checkbox"/>            | QUIROLA, ROSANA        |
| 10. | <input type="checkbox"/>            | SANOJA, SANTA          |
| 11. | <input checked="" type="checkbox"/> | SCHMIDT, ANDREA        |
| 12. | <input checked="" type="checkbox"/> | VEGANZONES, PEDRO      |
| 13. | <input type="checkbox"/>            | VIDAL, MARCOS A.       |
| 14. | <input type="checkbox"/>            | VILLEGAS, JAIME        |

Note:  
129 for Green Team identified to  
Juan Comas on proxy confirmations.

129

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6. The results of the annual election were announced at the December 11, 2024, annual meeting with the following individuals announced as the seven members elected to the Board of Directors, based on the Association's December 11, 2024, "Final Tally Sheet" of the election:

<u>Name</u>	<u>No. of Votes Received</u>
1. Jessica Romero Losada	434
2. Laurence Burnet	430
3. Marcos A. Vidal	430
4. Rosana Quirola	420
5. Lizbeth Beauchamp	416
6. Santa Sanoja	409
7. Jaime Villegas	404

7. The December 11, 2024, "Final Tally Sheet" of the election for the seven owners reflected on the Comas ballot reflects the following vote count:

<u>Name</u>	<u>No. of Votes Received</u>
1. Juan Jose Comas	355
2. Gino De Abreu	331
3. Lucas Decastelli	335
4. Santiago M. Delia	318
5. Jorge Mejia	329
6. Andrea Schmidt	361
7. Pedro Vezanzones	335

8. On December 12, 2024, at 6:47 p.m., Evonne Andris, attorney with the Law Firm, Siegfried Rivera, the Association's Counsel, ("Rivera") sent an email to all of the election candidates, and members of the Association's management team which provided as follows:

Dear Candidates:

Earlier this morning, the Doral Isles Community Association, Inc. ("Association") received a challenge to the Election of Directors which was conducted at the Association's Annual meeting held yesterday on December 11, 2024 ("Election"). The challenge brought forth a potential error in the vote count alleging that a weighted ballot vote was not properly counted and therefore the total votes for certain candidates were

understated. In response to what appeared to be an error in the vote count, tallied and completed by representatives of the community, a recount was requested by the complainant.

Immediately upon receiving the challenge, we contacted the Association's Management, and it was confirmed that the Election material were [sic] under lock, key and surveillance since the close of the Election yesterday evening and that the necessary documents to review for a recount would be digitized and forwarded to our attention for analysis and review. Upon initial review of the Election material, it was clear that a weighted ballot was left off the proxy portion of three sets of the Tally Sheet by a set of volunteer vote counters and therefore counted as one vote rather than 129 votes. As an error in the count was apparent, a recount was conducted by our office.

The recount has been completed and the results of the recount confirm that the challenge to the election was valid. We have been able to confirm with certainty that a weighted ballot of 129 votes was only given one vote thereby creating a vote shortfall of 128 votes. We were further able to confirm that the error occurred through one (1) set of counters that either advertently or inadvertently miscounted the weighted ballots. We were also able to confirm that the error in counting was limited just to one weighted ballot and **the election process itself was not an issue**. At this juncture, the results of last night's Election are not valid and based upon the recount the 2024-2025 Board of Directors to be recognized by the Association is as follows:

- Andrea Schmidt
- Juan Jose Comas
- Lucas Descatelli
- Pedro Veganzones
- Gino De Abreu
- Jorge Mejia
- Santiago M. Delia

As we understand many candidates will be upset by the results of the challenge and recount, we are attaching the following documents so that each of you can independently review the results of last night's election:

1. Election – Final Tally Sheet
2. Election – Tally Sheet – Set 1
3. Election – Tally Sheet – Set 2
4. Election – Online Vote Report
5. Election – Proxy Holder Ballots
6. Election – Single Ballots
7. Recount – Tally Sheet & Final Tally Sheet

We thank the candidate who brought the concern to our attention in the interest of ensuring the votes of the community were appropriately counted. It is truly unfortunate that an administrative error by volunteer members of the Doral Isles community has caused this inconvenience. Through this correspondence Management is being advised of the results of the election

and it is suggested that a Board of Directors Organizational Meeting be held by the above stated Board of Directors.

Should you have any questions regarding the forgoing and attached, please do not hesitate to contact our office. [Emphasis in the original].

Thank you,

**SIEGFRIED RIVERA**

Evonne Andris  
Shareholder

[Emphasis in original].

9. On December 13, 2024, a document titled Annual Meeting Error in Counting Notice to Community was issued by Doral Isles Community Association, Inc., on Doral Isles letterhead, and stated as follows:

Dear Homeowners:

In light of the challenges our community faced during the 2018 Annual Meeting and Election of Directors, Doral Isles Community Association, Inc. ("Association") made the goal of a fair and transparent election a priority. The foregoing has been the goal of the Association for many years, including for the Association's Election which took place earlier this week on December 11, 2024. Yesterday in the early morning hours, the Association was advised of an administrative concern regarding the results of the Election. A candidate in the election raised the concern that the vote tally appeared to be incorrectly totaled. Immediately upon receipt of the concern, the Association forwarded the claim to the Association's legal counsel who initially confirmed that the concern raised could be valid if a mistake was committed during the ballot count and requested a review of the election materials (Final Tally Sheet, Tally Sheet and Ballots). As the election materials were kept under lock, key and surveillance, they were digitized (scanned), e-mailed and forwarded to the Association's legal counsel who, after reviewing the documents forwarded, confirmed that an error occurred in the tallying of the votes during the Annual Meeting and a weighted ballot was missing from the vote total.

**Pursuant to Article 5.7 of the By-Laws of the Association:**

**5.7 Election.** Election to the Board shall be by secret written ballot, unless unanimously waived by all Members present. **The persons receiving the largest numbers of votes shall be elected.** Cumulative voting is not permitted.

Accordingly, as corrected, the 2024 - 2025 Board of Directors of the Association is as follows:

- Andrea Schmidt
- Juan Jose Comas
- Lucas Descatelli
- Pedro Veganzones
- Gino De Abreu
- Jorge Mejia
- Santiago M. Delia

In the interest of transparency and to address the concern of those in the community who have made serious allegations as to election process and the legitimacy of the foregoing Board members, please review the election materials, located on the Association ONR app under the Documents > All Documents > 2024 Election Results wherein you will note that during the Annual meeting a weighted vote of 129 votes was only counted once resulting in 128 vote discrepancy and disfranchisement of the vote of 128 members of the community.

We want to thank the community for its patience and assure the community the above results of the election have been confirmed valid and the election process for the Annual Meeting was conducted in accordance with the Association's Election Procedures.

Doral Isles Community Association, Inc.

[Emphasis in original].

10. On December 17, 2024, Rivera sent an email to the Association's Board of Directors which stated as follows:

Dear Members of the Announced Board:

This correspondence is being directed to you as the currently seated and acting Board by announcement at the Annual meeting of Doral Isles Community Association, Inc. ("**Association**"). As a result of our preliminary review, resulting from concern raised as to the alleged error in the tabulation of votes in the Doral Isles Community's Election which took place on the evening of December 11, 2024, at the Annual Meeting, we provided communication on Thursday, December 12, 2024, advising that there was an apparent and obvious error in the calculation of votes. The error occurred when a weighted ballot was counted as one (1) vote as opposed to 129 votes, which is evidenced by the lack of appearance of the weighted ballot (of 129 votes) on any of the signed tally sheets from the Election. The error occurred during the tally of the ballots by the volunteer inspectors of Election selected from the community to count the votes.



After considerable legal analysis and a detailed review, we have concluded that by failing to properly count all the weighted ballots, the Association effectively “prevent[ed] a full, fair and free expression of public will” of the owners in the subject election. *Boardman v. Esteve*, 323 So. 2d 259, 265 (Fla. 1959). Additionally, pursuant to Article 5.7 of the By-Laws of the Association, “[E]lection to the Board shall be by secret written ballot, unless unanimously waived by all Members present. **The persons receiving the largest numbers of votes shall be elected**” ... (Emphasis Added).

As the seated Board of Directors, and as the apparent officers and directors of the Association, under Florida Statutes s. 720.303, you are subject to Florida Statutes s. 617.0830 and have a fiduciary relationship to the members who are served by the Association. As all election material necessary to evaluate the error has been previously provided to you, following the provisions of the Association’s By-laws, there is an opportunity to quickly and efficiently voluntarily cure this error to achieve compliance with the By-Laws. To that end, it is our recommendation that, as the seated Board, you hold a Board Meeting as soon as possible where you recognize the results of the election in a forum open to all members of the community. As part of that meeting, you may want to openly review all of the election materials. If the result of the open review of the materials reveals that 128 votes of the members of the community were not properly counted in the election, in order to directly rectify the error and achieve compliance with the By-Laws provision above, we recommend that the seated Board execute a properly crafted resolution which serves to allow for the simultaneous resignation of the announced Board and the appointment of the persons receiving the largest numbers of votes as the duly elected Board. In the event the seated Board chooses not to rectify the error as recommended, please note that the Association may be subjected to unnecessary arbitration and/or litigation expenses related to the disenfranchisement of those 128 votes in violation of the Association’s By-Laws and Florida Statutes.

We recommend you contact our office if we can be of assistance in drafting the necessary notice and agenda for the meeting and the resolution to bring the Association into compliance with its By-Laws. Additionally, please advise if you would like our office to attend the meeting and provide a legal status and update the community. Should you have any questions in regard to the foregoing information, please contact our office.

[All emphasis in original].

11. On December 23, 2024, Counsel for Petitioner sent a letter to Rivera, which in pertinent part, requested:

1. An emergency Board meeting be scheduled within the next seven(7) business days to address this matter;
2. Formal recognition and certification of the corrected vote count;

3. Implementation of the election results based on the accurate tabulation;  
and
4. Written confirmation of these actions to all Association members.

12. On December 31, 2025, the Association's new Counsel, Michael C. Gongora, with the law firm Becker & Poliakoff, ("Becker") replied to Petitioners' Counsel's letter of December 23, 2024, in pertinent part, as follows:

Our firm now represents Doral Isles Community Association, Inc. (the "Association") and, as such, your December 23, 2024 letter to prior counsel Gary Mars, Esq. was forwarded to me for review and response.

At this time the Association does not accept the contention that there were "significant irregularities" in the vote counting process. As you know, there were numerous election inspectors appointed to oversee the vote count which was supervised by counsel from Siegfried Rivera. The Association is presently investigating how a weighted ballot representing 129 votes would have been missed by so many Association members and Counsel during the count of the ballots. To also complicate matters, the management company and prior board failed to respond to an inquiry prior to the election as to how many proxies had been received.

More troubling, the Association is also investigating the chain of custody of the election materials. It appears that the election materials went first back to the management office and then later were scanned to Siegfried Rivera who conducted a re-count within their offices and with no one from the Association present.

As such, the Association does not concede any error and will continue to investigate this matter further. To be clear, the most serious concern at this time is how a weighted ballot could have missed by so many people and did not appear until the next day....

#### Conclusions of Law

The Department has personal jurisdiction over the Parties and jurisdiction to conduct binding arbitration of an election dispute between the Association and its members pursuant to Sections 720.306 and 720.311, Florida Statutes ("Fla. Stat."). Here, because the undersigned finds that there is no issue of relevant material fact in dispute after the filings and evidence provided by the Parties, this case is appropriate for summary disposition pursuant to Rule 61B-80.114, Florida Administrative Code ("F.A.C.").

Petitioners assert that the Association's December 11, 2024, annual election was not conducted in accordance with the Association's governing documents because the Association failed to count all of the legitimate ballots submitted by proxy. Specifically, a ballot representing 129 proxy votes was counted as one vote. Petitioners argue that the recount and documentation from the election confirm that 128 votes were not counted at the annual election. The Association maintains that Rivera, the Association's Counsel, single-handedly conducted their own recount, without oversight or independent review, or any proper means to ensure chain of custody or accuracy of the tabulation. The Association in its Answer to the Petition raises seven affirmative defenses.

#### Relevant Statutory Provisions

Section 720.306(8), Fla Stat., titled PROXY VOTING, provides, in pertinent part:

The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy.

Section 720.306(9), Fla Stat., titled ELECTIONS AND BOARD VACANCIES, provides, in pertinent part:

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association.

[Emphasis added].

#### The Association's By-Laws

Article 4.8 of the Association's By-Laws, titled Proxies., provides as follows:

At all meetings, Members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of Section 617.306(6) of the Florida Statutes, as amended from time to time, be in writing, and be filed with the Secretary at, or prior to the meeting. Every proxy shall be revocable prior to the meeting for which it is given.

[Emphasis added].

Article 5.7 of the Association's By-Laws, titled Election, provides as follows:

Election to the Board shall be by secret written ballot, unless unanimously waived by all members present. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

[Emphasis added].

The undersigned's review of the election documents reveals that the evidence is clear that the Association failed to count all 129 proxy ballots at the December 11, 2024, annual meeting and election. On December 4, 2024, the Association acknowledged that it received 131 valid proxies from Petitioner Comas and provided him with written confirmation. The number of valid proxies was later reduced by the Association to 129 prior to the annual election as reflected in the Ballot submitted by Petitioner Comas. See, Findings of Facts ("FOF") Nos. 3 and 5.

There was a total of 17 proxy ballots cast in the same format as the ballot cast by Petitioner Comas. There were nine proxy ballots cast for what was identified as the "Unidas Team" which included the seven candidates named in FOF No. 6. There were eight proxy ballots cast for the "Green team" which included the seven Petitioners.

At the election the Association prepared three sets of "Tally Sheets" that were signed by the three Counters of the Ballots to verify the vote. Each Tally Sheet contained the name of a candidate and recorded the proxy votes counted under the name of each candidate on the top two lines. Each Counter completed three pages of the Tally Sheets. The number of proxy votes reflected on each proxy ballot was recorded on the top 2 lines of the Tally Sheet under the name of the receiving candidate. Below the proxy section, the Tally Sheet had a section that was numbered 1 through 150 and reflected in person votes for a candidate made at the meeting by strikethroughs of the numbers reflecting a vote. The total of the Proxy vote and the in person vote was recorded at the bottom of each Tally Sheet.

A review of the Tally Sheets and the Proxy Ballots by the undersigned revealed that only sixteen of the seventeen Proxy Ballots were recorded on the Tally Sheets. The Tally Sheets reflect that the Proxy Ballot cast by Petitioner Comas was not recorded at all on any of the Tally Sheets. The votes cast for Petitioners on Petitioner Camus' Proxy Ballot were not recorded on any of the Tally Sheets and were not recorded on the Association's Final Tally Sheet which reflected the total votes cast in the election. The Association failed to count all of the Proxy Ballots that were properly submitted in the election.

The most fundamental right that any voter has in an election is to have their legitimate vote counted. Based on this arbitrator's review of the Tally Sheets 128 homeowners were denied this right. When the 128 uncounted ballots are counted and added to the other legitimate ballots, Petitioners were properly elected to the Association's Board of Directors.

Prior Counsel for the Association, Rivera was notified that there might be an error in the count and moved to determine if there was an error. After review of the election documents, Rivera indicated to the candidates that an "error in the count was apparent" and that the results of the recount confirm that the challenge to the election was valid. The recount added 128 ballots to the total count and resulted in a different Board being elected. The email indicated that management is being advised of the results of the election and it was suggested that an Organizational Meeting of the new Board as determined by the recount be conducted. See, FOF No. 8.

On December 17, 2024, Rivera wrote a letter to the new Board where it again acknowledged the error in counting the proxy ballots and suggested that a resolution be adopted to allow the Board seated on December 11, 2024, to resign and for the

appointment of the persons receiving the largest number of votes as the duly elected Board. See, FOF No. 10.

On December 23, 2024, Counsel for Petitioner Comas sent a letter to Counsel for the Association advising that a weighted ballot comprising of 129 votes was counted as one vote during the December 11, 2024, election and that a recount confirmed this error. Counsel for Petitioner requested that:

1. An emergency Board meeting be scheduled within next seven (7) business days to address this matter;
2. Formal recognition and certification of the corrected vote count;
3. Implementation of the election results based on the accurate tabulation; and
4. Written confirmation of these actions to all Association members.

Should the Board decline to take these corrective measures by December 30, 2024, we will be compelled to exercise all available legal remedies, including:

1. Filing for mandatory binding arbitration pursuant to Florida Statutes & Section 720.3036(9)(b)....

By letter dated December 31, 2024, Becker advised that it was responding to Petitioners' Counsel's December 23, 2024, letter and stated that "[a]t this time the Association does not accept the contention that there were "significant irregularities" in the vote counting process." Counsel also advised that "the Association does not concede any error and will continue to investigate this matter further." See, FOF, No 12.

The preponderance of the evidence supports that there were 128 proxy votes that were not counted at the election, and the Association while claiming that it does not accept the contention that there were "significant irregularities" in the vote counting process and the need to investigate further, has produced no evidence to contradict this fact.

### The Association's Affirmative Defenses

#### 1. Pre-Arbitration Notice

The Association raised in its Motion to Dismiss that Petitioners failed to provide proper pre-arbitration notice. This defense and the argument made in the Association's

Motion to Dismiss and again in its Answer to the Petition were addressed specifically and rejected in the March 18, 2025, Order Denying Respondent's Motion to Dismiss. Since no new persuasive evidence has been provided, this issue will not be revisited in this Order.

## 2. Petitioners' Unclean Hands

The Association asserts that because some of the Petitioners were members of the previous Board, they are responsible for the December 11, 2024, electoral process and thus cannot seek relief for errors made in this election dispute. All homeowners, regardless of position, are entitled to have an election that is conducted in accordance with the Association's governing documents and Florida law. As provided by Article 5.7 of the Association's By-Laws, the persons receiving the largest number of votes shall be elected. The Association also asserts that Petitioners were responsible for hiring previous Counsel and the previous management company that conducted the election and thus are responsible for any omission or errors made by their agents.<sup>1</sup> The Association has presented no evidence of any wrongdoing by Petitioners and this defense is rejected.

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<sup>1</sup> The Association has asserted that "Petitioner's allegations are predicated upon a privileged communication from the association's then-counsel to the Association's current board of directors. The communication, and its contents, presents a legal opinion that was sent in confidence to the Association Board and the Association Board has never waived that confidentiality." The first communication regarding the counting of Proxy ballots was sent by Rivera to the candidates and the Association Management on December 12, 2024. See, FOF No. 8. The second communication was sent from the Association to the members on December 13, 2024. See, FOF No 9. The third communication, which the Association apparently claims was privileged was sent from Rivera to the Board on December 17, 2024. See, FOF No. 10. All three communications contained essentially the same information regarding the alleged failure of the Association to count all of the Proxy ballots. There can be no claim of privilege where, as here, the "privileged communication" has been openly disclosed. Any information claimed to be privileged in Rivera's December 17, 2024, correspondence to the Board had previously been disclosed to the candidates and the members. The Association cannot use the claim of privilege to suppress evidence that has already been disclosed.

It must be noted that Rivera and the Association's management acted with the utmost integrity and competence in preserving the election documents and in not forgetting that their obligation is to the Association and its members and to ensure that the Association's election: 1) is conducted

### 3. No Actual Damage Suffered by Petitioners

This defense is rejected as actual damage under the statute is suffered not only by Petitioners but by all the community owners where an Association fails to conduct an election in accordance with its governing documents as required by Section 720.306(9)(a), Fla. Stat.

### 4. Pre-Arbitration Mediation was Offered and Accepted

The Association asserts that presuit mediation was offered and accepted. Section 720.311(1), Fla. Stat. prescribes the procedure for pre-suit mediation of disputes and provides relevant to this dispute that “[e]lection disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. Accordingly, this defense has no merit.”

### 5. Petitioners' Claims Are Not Supported by Fact or Law

The Association asserts that once the initial election results are announced the Association Board changes hands and the term of that Board ends with the election of new members at the annual meeting. If this were true, there could never be a challenge to an election once the election results are announced and any Board elected in violation of its governing documents could serve until the next election. This assertion is contrary to: 1) Sections 720.306(9)(c) and 720.311(1) Fla. Sta., which provide for binding arbitration with the division or filing with a court of competent jurisdiction of any election dispute; and 2) Section 720.306(9)(a), Fla Stat., which requires that elections be conducted in accordance with the Association's governing documents and requires that

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according to the Association's governing documents and Florida law and 2) is a full and fair expression of the community owners' will.



any challenge to the election process must be commenced within 60 days after the election results are announced.

The Association also argues that the recount was not properly conducted. Arbitration case law is clear that a recount by the Association should only be conducted after notice to, and in the presence of the members. *See, Todd Kesterson et al. v. New Floresta Homeowners' Association, Inc.*, Arb. Case No. 2022-01-8181, Summary Final Order (August 8, 2022). Here, however, the Association failed to acknowledge that a recount was required even after notification was provided to the candidates by Rivera and to the Board directly by Rivera. *See*, FOF Nos. 8 and 10. In its December 17, 2024, letter to the newly and improperly elected Board, Rivera advised the Association's elected Board that a meeting should be held to address the apparent errors in the vote count and advised that it would draft a notice and agenda for the meeting and a resolution as required. *See*, FOF No. 10. The Association's response was to terminate Counsel. The Association cannot now claim that proper procedure was not followed when the improperly elected Board controlled the procedure and refused to address the issue by properly noticing a meeting of the members and conducting a recount of the ballots. This affirmative defense is rejected.

#### 6. The Association Acted in Good Faith

The Association cites Article 4.1.6 of its By-Laws, as authority for its ratification of the results of the December 11, 2024, annual election. Article 4 of the Association's By-Laws is entitled Members. Article 4.1 of the Association's By-Laws provides as follows:

Voting Interests. Each Owner and Developer shall be a Member of the Association. No person who holds an interest in a Home only as security for the performance of an obligation shall be a Member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Home. There shall be one vote appurtenant to each

Home. For purposes of determining who may exercise the Voting Interest associated with each Home, the following rules shall govern:

[Emphasis added].

Articles 4.1.1 through 4.1.5 identify and provide the rules for participation by homes owned by husband and wife, trusts, corporations, partnerships and multiple individuals to exercise their voting interests. Article 4.1.6, provides as follows:

Liability of Association. Association may act in reliance upon any writing or instrument or signature whether original or facsimile, which Association in good faith , believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction connected with the provision hereof has been duly authorized to do so. So long as Association acts in good faith, Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

It is the conclusion of the arbitrator that Articles 4.1, 4.8 and 5.7 of the Association's By-Laws must be interpreted in *pari materia*, or in other words, they must be read and construed together. *The Palm Club Association, Inc., v. Callahan*, Arb. Case No. 98-3994, Summary Final Order (January 19, 1999) (Portions of a declaration which address the same subject must be read in *pari materia*.), *See also, Kol v. Beach Club Villas Condominium II, Inc.*, Arb. Case No. 2021-03-5951, Final Summary Order (January 18, 2022) ("The arbitrator must interpret the plain meaning of the language as written.") citing, *Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So. 2d 1 (Fla. 2004) ("Where the language in a statute is clear and unambiguous, and conveys a clear and definite meaning, it must be given its plain and obvious meaning.")

It is axiomatic that the different sections of the By-Laws must be interpreted to give meaning to each section and to make the By-Laws harmonious. *See, Rhoda Blau v.*

*Martinique 2 Owners Association, Inc.*, Arb. Case No 99-1880, Summary Final Order (January 6, 2000). Clearly, based on its specific language, Article 4.1 of the Association's By-Laws applies only to the determination of Voting interests and Article 4.1.6 is limited to liability stemming from the Association's determination of those Voting Interests. As noted previously, Section 720.306(9)(a), Fla. Stat., Articles 4.8 and 5.7 of the Association's By-Laws control voting in the Association. The Association's expansive interpretation of Section 4.1.6 of the By-Laws to preclude any challenge to the election process where the Association acts in good faith would render the Florida Statute and the Association's By-Laws governing elections meaningless. An Association could simply claim that it acted in good faith and all election irregularities would not be actionable.

The Association also maintains that it was not given a reasonable opportunity to investigate the election. Rivera's December 12, 2024, email to all of the candidates and the Association management attached the relevant election documents for their independent review. See, FOF No 8. The Association's December 13, 2024, document titled Annual Meeting Error in Counting Notice to Community also indicated that the election documents were placed on the Association's website for all homeowners to review. See, FOF No. 9. The Association has produced no evidence that contradicts its undisputed election documents. This defense is rejected.

#### 7. The Proper Remedy is a New Election

While not a defense, the Association argues "that even should Petitioners claims have merit, the proper resolution would not be an entire change of the Association Board according to Petitioners' tabulation of votes, but rather a re-election conducted in compliance with the Association's Governing Documents and Florida Law." Rule 61B-80.121(6), F.A.C., provides as follows:

The arbitrator in the final order may grant mandatory or prohibitory relief, declaratory relief, or any other remedy or relief that is just and equitable. No final order shall include a civil penalty assessed against a party. Relief may include certification of an election or recall, decertification of an election or recall, a requirement that a new election be held, certification of a candidate for election, decertification of a candidate, requiring a board to fill a vacancy or hold an election to fill a vacancy, requiring a director to return association records to the board, and cease acting as a board member, or other relief as may be appropriate in a given case.

### Conclusion

The Association also raises issues whether other proxies were disqualified, the validity of the proxies, the chain of custody of the proxies, and that their former Counsel did not inform the Association of how many proxies were submitted, claiming these questions raise reasonable doubt about whether the ballots recounted are the same ballots counted at the meeting. Arguments posited by the Association or their Counsel are not evidence, and here the documentary evidence is clear that 128 of the proxy ballots submitted were not counted. Here, 128 legitimate voters were disenfranchised, resulting in 896 votes not counted for the Annual Election.

Accordingly, it is **ORDERED**:

1. As they were duly elected by a vote of the members on December 11, 2024, the Association will, as of the date of this Order, immediately seat the following Board Members:

- Andrea Schmidt
- Juan Jose Comas
- Lucas Descatelli
- Pedro Veganzones
- Gino De Abreu
- Jorge Mejia
- Santiago M. Delia

2. The following Board Members announced as elected on December 11, 2024, are immediately removed from the Board of Directors and shall immediately turn over to the Board all records, documents, files and Association property in their possession.

- Jessica Romero Losada
- Laurence Burnet
- Marcos A. Vidal
- Rosana Quirola
- Lizbeth Beauchamp
- Santa Sanoja
- Jaime Villegas

3. Petitioners are the prevailing Party in this election dispute.

DONE AND ORDERED this 13th day of May 2025, at Tallahassee, Leon County, Florida.

Signed: Mahlon C. Rhaney, Jr.

Mahlon C. Rhaney, Jr., Chief Arbitrator  
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Condominium Arbitration and  
Mediation Program  
Dept. of Business &  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399-1030  
Telephone: 850.414.6867  
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#### **Binding Decision and Attorney's Fees**

This decision shall be binding on the parties in accordance with Section 720.311(1) Florida Statutes and Rule 61B-80.121, Florida Administrative Code.<sup>2</sup> The prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees pursuant to Section 720.311(1) Florida Statutes. Any such request must be filed within 30 days of the date of the final order in accordance with Rule 61B-80.123, Florida Administrative Code.

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<sup>2</sup> Section 720.311(1), Fla. Stat. provides that "the department shall conduct binding arbitration of election disputes between a member and an association in accordance with s.718.1255 and rules adopted by the division." Section 718.1255(4)(m), Fla. Stat. provides that "[a]ny party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located."

**Certificate of Service**

I HEREBY CERTIFY that on May 13, 2025, copies of this final order were served by email and U.S. Mail to:

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Signed: *Mahlon C. Rhaney, Jr.*  
Mahlon C. Rhaney, Jr., Chief Arbitrator