

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

**IN RE: PETITION FOR ARBITRATION - HOA**

**Steven Dobbins, Greg Holt, Mike Mazur,  
Josue Nieves and Doug Welson,**

**Petitioners,**

**v.**

**Case No. 2009-05-1294**

**Tiffany Woods Homeowners  
Association, Inc.,**

**Respondent.**

Filed with  
Arbitration Section

DEC - 7 2009

**SUMMARY FINAL ORDER**

**Statement of the Issues**

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

The principle issue in this election dispute is the impact of rejecting ballots that contained votes for too many candidates, when single ballots were used to cast votes for multiple lot owners based upon proxies held by the person who cast the ballot.

**Procedural History**

On September 25, 2009, the above-named individuals filed a Petition for Mandatory Binding Arbitration alleging that they had been elected as directors at the annual meeting of Tiffany Woods Homeowners Association on March 17, 2009.<sup>1</sup> The Petition alleged the members of the prior board contend they had been re-elected, based upon conflicting methods of counting the vote totals.

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<sup>1</sup> This is the second arbitration petition arising from the same election: on July 7, 2009, the "Tiffany Woods HOA 2008-2009 Board of Directors" filed a petition seeking approval of their certification that they had been re-elected. That earlier case was dismissed on July 14, 2009 for lack of jurisdiction because the Association was not a party, the old board had no legal identity separate from the Association, and there is no jurisdiction to arbitrate an association's request to confirm the validity of an election.

An Order Requiring Answer was entered on October 5, 2009, and an Answer was filed on October 27, 2009. On November 3, 2009, an Order Requiring Supplemental Filing was entered directing the Association to file the original ballots, proxies, tally sheets and any other document necessary to calculate which ballots voted for multiple parcels in the March election. Each party was allowed ten days after the original ballots were filed to present argument as to the proper count of the ballots. The original documents were filed on November 18, 2009. The Association filed its argument on November 25, and Petitioners filed their argument on November 30.

The original election documents include a blank ballot form and 23 executed ballots; a roster sheet with signatures of attendees and designations of proxy holders for some members not in attendance; eight candidate information sheets; 6 tally sheets; ballots for a contemporaneous election as to a by-law amendment; 42 executed general proxies; and limited proxies for the amendment. This Summary Final Order is based upon the pleadings and arguments of the parties, and the arbitrator's count of the original ballots.

#### Findings of Fact

1. Tiffany Woods Homeowners Association, Inc. is the corporate entity responsible for operation and maintenance of the subdivision known as Tiffany Woods in Seminole County, Florida.
2. The Association is made up of the owners of 74 lots in the subdivision.
3. The board of directors of the Association consists of 7 members. All of the board seats were up for election at the annual meeting on March 17, 2009.
4. The printed election ballots contained eight printed names and six blank

lines, under each of which was typed "Write-In Candidate". Instructions printed above all the names state:

There are seven (7) open positions; you may vote for up to seven (7) candidates. Voting for more than seven (7) candidates will invalidate this ballot.

Mark vote by placing a checkmark in the box to the left of your desired candidate.

5. At the time of the election, 42 general proxies were submitted designating 12 individuals to cast votes for each lot owner who executed a proxy (Unfortunately, one lot owner executed two proxies for his lot, naming two different individuals. It appears each of the proxy holders was allowed to cast a vote for the lot.)

6. Twenty-three ballots were cast in the election. Ten of the ballots had hand written numbers in the upper right corners.<sup>2</sup> These numbers range from 2 to 14, corresponding exactly to the numbers of proxies executed per proxy holder plus the lot(s) owned by the proxy holder.

7. The election was conducted by a representative of the non-owner association manager.

8. When the ballots were first submitted, two of the ballots contained check marks by eight names. The association manager returned these "over voted" ballots to voters who converted one of the check marks to an "x" and resubmitted the ballots. The over votes appear on ballots with hand written numbers 7 and 14 in the upper right corner of the ballot.

9. If all the ballots are counted, and votes counted for the ballots according to the numbers written on the ballots, but not counting votes for the candidate with the two "x"

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<sup>2</sup> As filed, the upper right numbers were covered by yellow post-it notes, which were easily lifted.

marks, the results of the election would be as follows:

Bob Penn	39	Pamela Fields	39	Jose Nieves	26
Helen Starnes	39	Linda Lockey	49	Mike Mazur	25
Judy Starks	40	Gary Underwood	40	Greg Holt	26
Kathie Holland	39	Janel Dixon	27		
Doug Welson	26	Steve Dobbins	26		

10. The 21 votes represented by the two over voted ballots were all cast for the same candidates. If those ballots are invalidated the results of the election change to:

Linda Lockey	30	Janel Dixon	27	Greg Holt	26
Jose Nieves	26	Doug Welson	26	Mike Mazur	25
Steve Dobbins	26	Gary Underwood	19	Judy Starks	19
Bob Penn	18	Pamela Fields	18		
Helen Starnes	18	Kathie Holland	18		

#### Conclusions of Law

The Division has jurisdiction over the parties and the subject matter pursuant to Sections 720.306(9), 720.311 and 718.1255, Florida Statutes.

Section 720.306(9), Florida Statutes, governs election of directors for homeowners associations. It provides:

(9) ELECTIONS. – Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings shall be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division.

The By-laws of the Association require the use of proxies and a secret ballot for election of directors, but otherwise are silent as to the procedures which must be followed.

In this case the way the proxies were voted conflicted with the requirement for a secret

ballot. The circled numbers on the face of the ballots, when compared with the roster sheet with designation of proxies, made the identity of the voter and all those who executed proxies easy to identify. This could be avoided if the proxy holder executes an outer envelope for each vote represented and/or fills out a ballot for each proxy. Then the vote would be secret from everyone but the proxy holder. In any event, a voter may waive the secrecy of his ballot. Because the legislature created the right to vote by proxy, without a requirement for secret ballots, the By-law provision for a secret ballot must be applied in a way that allows proxy voting. *Castro v. Snapper Creek Townhouse Home Owners Association, Inc.*, Arb. Case No. 2009-01-2882, Summary Final Order (July 10, 2009).

The fact that only one ballot was used to cast votes for all proxies held by the voter is not a basis to reject the ballot, and votes could be counted for each of the lots represented by the proxies.

Ballots that are executed contrary to the instructions contained on the face of the ballot are subject to being invalidated. This is particularly true when the ballot says that voting for more than seven (7) candidates will invalidate the ballot. When more candidates are voted for than the number of seats to be filled, only seven can be counted or the voter would be given an advantage over other voters. The election official cannot determine for which candidates marks should be counted and arbitrarily disregard one check mark over another. Although, in this case, a check mark was converted to an "x" for one of the candidates, without crossing out the name of a candidate or obliterating the check, the meaning of that change is not apparent on the face of the ballot. The election official cannot give the voter a second ballot or engage in

conversation with a voter to determine the intent of the change. Thus, any count of an "over voted" ballot would be arbitrary, and reduce the weight of ballots that were correctly filled out.

For association elections, as for general elections, the fundamental inquiry should be whether or not the irregularity complained of has prevented a full fair and free expression of the public will. See, *Boardman v. Esteva*, 323 So. 2d 259, 265 (Fla. 1975). *Boardman* addressed irregularities in the execution of absentee ballots, some of which caused a breach of the requirement of secrecy. *Boardman* concluded:

In determining the effect of irregularities on the validity of absentee ballot case, the following factors should be considered:  
(a) the presence or absence of fraud, gross negligence, or intentional wrongdoing;  
(b) whether there has been substantial compliance with the essential requirements of the absentee voting law; and  
(c) whether the irregularities complained of adversely affected the sanctity of the ballot and the integrity of the election.

*Id.*, at 269.

There can be no dispute that the actions of the association manager in this case adversely affected the sanctity of the ballot and the integrity of the election. Although the statement of facts presents vote counts based roughly upon the contentions of the party, those counts rely on interpretation of ballots altered after the "over votes" and altered by the numbers on the upper right of some ballots representing the questionably valid proxies. Thus, no objective count based upon the existing records could provide satisfaction as to the integrity of the election.

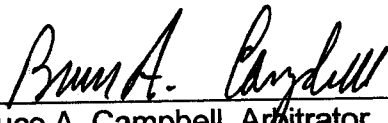
Based upon the foregoing, it is ORDERED:

1. Within thirty (30) days of the date of this Order, Tiffany Woods Homeowners Association, Inc. shall provide notice to all members for a special election

of seven members of the board of directors to be held on or before January 19, 2010;

2. The members of the board of directors elected in the special election shall serve until the annual meeting of the Association held according to its By-laws, on the third Tuesday of March, 2010.

DONE AND ORDERED this 7th day of December, 2009, at Tallahassee, Leon County, Florida.


  
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Bruce A. Campbell, Arbitrator  
Dept. of Bus. & Prof. Reg.  
Arbitration Section  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

**Certificate of Service**

I hereby certify that a copy of the foregoing Summary Final Order was furnished by U.S. Mail on December 7, 2009 to the following:

Steven Dobbins  
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Oviedo, FL 32765

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Bruce A. Campbell