

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

IN RE: PETITION FOR ARBITRATION – ELECTION DISPUTE

**CMG Condo Fund, LLC,
CMG KLT, LLC,
First Kendall Lake Towers, LLC,
Melanie Salas,
GIMATO, LLC,
Francisco Nunez, and
Natalie Estevez,**

Petitioners,

v.

Case No. 2013-02-6297

**Kendall Lake Towers
Condominium Association, Inc.,**

Respondent.

_____ /

FINAL ORDER OF DISMISSAL

On June 24, 2013, CMG Condo Fund, LLC, CMG KLT, LLC, First Kendall Lake Towers, LLC, Melanie Salas, GIMATO, LLC, Francisco Nunez, and Natalie Estevez (Petitioners) filed a Request for Expedited Determination of Jurisdiction and a Mandatory Non-Binding Petition for Arbitration – Election Dispute, naming Kendall Lake Towers Condominium Association, Inc. (the Association) as Respondent. In pertinent part, the petition alleges irregularities in the February 11, 2013 Board of Directors' election as follows:

14. In advance of the Contested Election, Respondent, under the guidance of the Receiver, committed several violations that tainted the voters' freedom and the election's results. Specifically, Respondent:
 - a. Provided marked ballots to pre-selected voters. . . .
 - b. Failed to send election notices, envelopes and ballots to certain pre-selected unit owners. . . .

c. Prior to the scheduled election the Respondent's Board of Directors voted to suspend any unit owners that the Respondent believed to be over 90 days delinquent. [The petition then alleges Respondent nevertheless counted all the votes received, irrespective of their alleged 90-day delinquency.]

According to the petition, the Association currently is under receivership in Circuit Court Case No. 12-39123-CA-20 in the 11th Judicial Circuit in and for Miami-Dade County, Florida.¹ As of the date of the Order entered herein, the online docket for Circuit Court Case No. 12-39123-CA-20 shows that the case is still pending in Circuit Court. The Court charged the Receiver with "overseeing the already noticed election of the Board of Directors." See Duplicate (corrected case number) Agreed Order Establishing Fees and Payments to Receiver (circuit court order dated November 13, 2012); Receiver's Amended and Renewed Motion to Cancel Special Meeting of Owners and Special Election of Directors of the Kendall Lake Towers Condominium Association, Inc., Scheduled for December 4, 2012 (filed in circuit court on November 28, 2012). In response to the Receiver's Motion to Cancel the December 4, 2012 election, the Court granted the motion and required that a new election be held. See Order Granting Receiver's Motion to Cancel Special Election (circuit court order dated December 3, 2012). The February 11, 2013 election at issue is the result of the Court's December 3, 2012 Order. It is clear that the Court has charged the Receiver with overseeing the election at issue and that the Court is exercising continuing and active supervision of the Receiver with respect to the election. Therefore, it is not appropriate for the arbitrator to take jurisdiction over this dispute, and this arbitration case should be dismissed. See, e.g., *Schmutz v. Regatta Bay Owners Ass'n, Inc.*, Arb. Case No. 2011-

¹ Kendall Lake Towers Condominium Association, Inc., et al. v. Reynal Rodriguez, et al.

01-6126, Final Order of Dismissal (May 4, 2011) (citing *Cooper v. Kensington Walk Master Ass'n and Kensington Walk Condo. Two Ass'n*, Arb. Case No. 2004-00-8633, Order Vacating Final Order Determining Jurisdiction and Final Order of Dismissal (March 30, 2004) and *Philistin v. Shaker Village Condo. Ass'n Inc.*, Arb. Case No. 98-5026, Final Order Acknowledging Dismissal (January 11, 1999)). Finally, even though the circuit court case was not filed by Petitioners, judicial economy requires dismissal of the instant arbitration case. See *Ubilla and Friedle v. Island Club Resort Homeowners Ass'n, Inc. and Island Club Resort Development, Inc.*, Arb. Case No. 2012-03-4544, Final Order of Dismissal (Sept. 24, 2012).

Based upon the foregoing, it is **ORDERED**:

Arbitration Case No. 2013-02-6297 is DISMISSED.

DONE AND ORDERED this 2nd day of July, 2013, at Tallahassee, Leon County, Florida.

Glenn Lang, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Phone: 850-414-6867 / FAX: 850-487-0870

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile and by U.S. Mail, postage pre-paid, to the following person on this 2nd day of July, 2013:

[This space intentionally left blank. Recipient appears on the next page.]

Ross D. Kulberg, Esq.
Moris & Associates
8700 West Flagler Street, Suite 120
Miami, Florida 33174
Facsimile: 305-559-1600
Attorneys for Petitioner

Glenn Lang, Arbitrator