

Charlie Liem, Secretary

Charlie Crist, Governor

August 13, 2010

Ms. Paola Iriarte
4354 NW 9th Avenue,
Building 13-2B, Box #198
Deerfield Beach, Florida 33064

Re: Heritage Circle Condominium Association, Inc. ("Association")
Case No. 2010015850

Dear Ms. Iriarte:

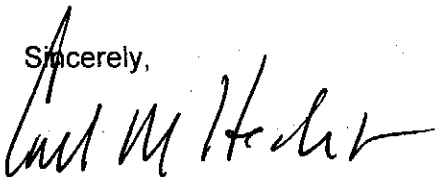
Reference is made to my letter dated April 5, 2010.

The Division has completed its investigation and, enclosed for your records, please find a copy of the Warning Letter issued to the Association.

The Association is required to respond to the Warning Letter. Upon receipt and consideration of the Association's response, I will notify you as to the disposition of this case.

If you have any questions, please feel free to contact me at 954-202-3982, Extension #206 or by email at Carl.Hecht@dbpr.state.fl.us.

Sincerely,



Carl M. Hecht
Investigation Specialist II
Bureau of Compliance-Fort Lauderdale

Enclosure:

Warning Letter to Association

cc:

Mr. Tarkan Doser
4354 NW 9th Avenue
Building 12-2D, Box 188
Deerfield Beach, Florida 33064

Charlie Liem, Secretary

Charlie Crist, Governor

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND EMAIL

CERTIFIED NO: 7009 2250 0004 2467 9315

EMAIL ADDRESS: choilawyer@aol.com

August 13, 2010

IL Young Choi, Esq.
Choi & Menezes, LLP
1925 Brickell Avenue, Suite D-205
Miami, Florida 33129

Re: Heritage Circle Condominium Association, Inc. ("Association")
Case No. 2010015850

Dear Mr. Choi:

As you are aware from our telephone conversations (and meeting to review the Association's election records on June 18, 2010), the Division of Florida Condominiums, Timeshares and Mobile Homes ("Division") received and has been investigating a complaint against the Association relating to the Annual Election (January 27, 2010) for the 2010 Board of Directors.

As per our August 13, 2010 telephone conversation, the Division has completed its investigation and has determined that the Association has, in fact, committed the election violations described below and, as per the Division's Resolution Guidelines, the Division is addressing these violations by way of this Warning Letter which, in addition to citing the Association for the violations, is designed to provide education to the Association pursuant to rule 61B-21.002, Florida Administrative Code.

The violations being addressed by this Warning Letter are as follows:

1. The Association, in violation of section 718.112(2)(d)3., Florida Statutes, and rules 61B-23.0021(4) and (8), Florida Administrative Code, respectively failed to provide certain unit owners with a First and/or Second Notice of Election.
2. The Association, in violation of rule 61B-23.0021(10), Florida Administrative Code, improperly validated the signatures on the outer envelopes.
3. The Association, in violation of section 718.112(2)(d)3., Florida Statutes, and rule 61B-23.0021(10), Florida Administrative Code, counted ineligible ballots.
4. The Association in violation of section 718.111(12)(a)(12), Florida Statutes, and rule 61B-23.0021(13), Florida Administrative Code, failed to maintain election materials for one year following the election.

Specifically:

1. Failure to provide certain unit owners with First and/or Second Notices of Election:

Associations, as per section 718.112(2)(d)3., Florida Statutes, and rules 61B-23.0021(4) and (8), Florida Administrative Code, are required to mail, deliver or electronically transmit first and second notices to those unit owners entitled to vote. In the case of second notices, assuming that there are more candidates than vacant positions, ballots are among the items to be included in the notice.

During the course of this investigation, the Division received Affidavits (copies attached) from unit owners Ozgur Avsar and Volkan Bozdogan, residents of the community, stating that they did not receive notification of the election or a ballot. Additionally, on April 22, 2010, this Investigator was contacted by unit owner Lori Canales, another resident of the community, who informed this Investigator that she, too, had not received an election notification or a ballot.

During the course of this investigation, as indicated above, the Division reviewed the Association's election records. Among these records was a document entitled "Foreclosure Units." This document, prepared by the Association, designates seventy (70) units as being under foreclosure and was presented to the Election Monitor (The Voting Group, LLC) for the ostensible purpose of disregarding, or not counting, the ballots of those unit owners behind in assessments or whose units were in foreclosure.

For information purposes, it is noted that the Condominium Act, was amended effective July 1, 2010 to allow [Section 718.303(5), Florida Statutes] for the suspension of the voting rights of those unit owners delinquent in the payment of assessments and other monetary obligations owed to the Association. The Condominium Act did not allow for such suspension at the time of the 2010 Annual Election.

You were present at the Election and the Division understands that you intervened and advised the Association and/or Mr. Brien Gittens of The Voting Group, retained to count the ballots, that there was no basis for disregarding the votes cast by delinquent unit owners. The Division upon review of the outer envelopes (174) and the ballots cast (174) is satisfied that all ballots cast were counted.

However, the counting of all ballots cast does not mitigate the violation.

Specifically, Mr. Avsar, Mr. Bozdogan and Ms. Canales appear among the names on the list of "Foreclosure Units." It is noted, upon reviewing the outer envelopes, that Mr. Avsar and Ms. Canales, who indicate that they did not receive an election notification or a ballot, did not cast votes. Mr. Bozdogan who also, as per his Affidavit, did not receive notification or a ballot, did cast a vote, but only by going to the Association Office to do so.

Further, the Division's review of the outer envelopes indicates that there were no ballots cast by any of the remaining sixty seven (67) remaining unit owners appearing on the "Foreclosure List." This supports inescapable conclusion that certain unit owners were improperly systematically excluded from the election process and belies the Association position that all unit owners were mailed or otherwise provided with a First and/or Second Notice as set forth in Board President Brondo's "Affidavits of Notice."

Based on the foregoing, the Division determines that the Association did, in fact, commit a violation of the Condominium Act and Condominium Administrative Rules by failing to provide those allegedly delinquent unit owners with a First and/or Second Notice of Election.

2. Failure to properly verify signatures on outer envelopes:

Rule 61B-23.0021(10), Florida Administrative Code, governs the handling of ballots received by an association. The first event at the election meeting is the collection of uncast ballots. Thereafter, the association is required to validate the signatures and unit identifications on the outer envelopes if not validated previously at a duly noticed, open board meeting on the date of election. The key concept is that the validation of signatures, as well as the entire election process, is to be conducted in the presence of the unit owners.

In this regard, the Division became aware that some of the outer envelopes (ballots) were removed from the room in which the election meeting was being held.

This Investigator spoke to Mr. Brien Gittens of The Voting Group on June 9, 2010. Mr. Gittens stated that, during the validation process, he took some outer envelopes into the Association Office in order to verify the signatures and prevent the ballots contained therein from being disregarded. Mr. Gittens stated that he compared the signatures on the outer envelopes to signatures on such Association records as applications to purchase. Mr. Gittens states that the ballots never left his hands and were returned before being counted.

If the signatures on the outer envelopes required validation by the use of Association records, the Association records being used as a comparison should have been brought into the room in which the Election was taking place and the comparison, or verification completed in the presence of the unit owners present at the meeting.

Based on the foregoing, the Division determines that the Association's actions, as described above, amount to or are analogous to not counting ballots in the presence of the unit owners and, thus, a violation of rule 61B-23.0021, Florida Administrative Code.

3. Counting ineligible ballots:

As indicated above, this Investigator reviewed the Association's election records.

Attached are the copies of the outer envelopes for Unit 2A (Building 14) and Unit 2C (Building 21). Both of these units are owned by Mr. Geraldo Staziaski and the outer envelopes clearly indicate that the votes for these units were cast by a Power of Attorney (POA).

The Condominium Act limits the use of a power of attorney in elections for directors.

Specifically, as per section 718.112(2)(d)3., Florida Statutes, "No unit owner shall permit any other person to vote his or her ballot and any such ballots improperly cast shall be deemed invalid..."

As indicated above, The Voting Group's Statement of Voting Results indicates that there were 174 ballots cast in the subject election and that no ballots were disregarded. The ballots cast by way of power of attorney should have been disregarded and not counted.

IL Young Choi, Esq.
Heritage Circle Condominium Association, Inc.
August 13, 2010
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Based on the foregoing, the Division determines that the Association did, in fact, count ineligible ballots in violation of section 718.112(2)(d)3., Florida Statutes and that outer envelopes disregarded pursuant to rule 61B-23.0021(10), Florida Administrative Code.

4. Failure to maintain election records:

As per rule 61B-23.0021(10), Florida Administrative Code, the signature and unit identification on the outer envelope shall be checked against a list of qualified voters.

As 174 outer envelopes were collected and none disregarded, there should be a document or relating to the verification process and, at the time of the election records inspection, the Association was asked to produce same.

The Association provided the attached document entitled "Owners Name Voto." This document indicates that seventy two (72) unit owner names and unit identifications were checked. When questioned as to why only seventy two (72) unit owner names were checked, the Association could not provide an answer nor could it produce any document indicating that the remaining 102 outer envelopes collected had been checked.

The Voting Group was contacted. Mr. Brien Gittens indicated that two (2) groups verified and counted the ballots. Mr. Gittens and two (2) unit owners constituted one group and Mr. Kevin Gittens and two (2) unit owners constituted the other group. Mr. Gittens indicated that all outer envelopes had been verified in similar fashion and that The Voting Group returned and did not retain any records relating to the Election.

Section 718.111(12)(a)12., Florida Statutes, and rule 61B-23.0021(13), Florida Administrative Code, requires associations, in addition to the documents specified, to maintain "all other papers relating to voting by unit owners for a period of one (1) year.

As the Association cannot produce complete records of the outer envelope verification process, the Division determines that the Association failed to maintain election records as required and, therefore, committed a violation of section 718.111(12)(a)12, Florida Statutes, and rule 61B-23.0021, Florida Administrative Code.

As you know, rule 61B-21.002(4), Florida Administrative Code, requires that associations submit a written response to a Warning Letter. The Association's response to this Warning Letter is due on or before **Friday, August 27, 2010**. The Association response must acknowledge the violations, the Association's understanding of the applicable statutory requirements and include a statement as to the future steps the Association will take to comply with the requirements of section 718.111(13), Florida Statutes.

The Association's response should be addressed to me at the address indicated in the top right corner of the first page of this letter. An email response will be accepted as long as it is signed by a Board Member. If by email, the response should be sent to Carl.Hecht@dbpr.state.fl.us.

The Division will require corrective action. Based on the Division's determination that the unit owners were not properly noticed and provided ballots with which to cast their votes, the Association will be required to redo the 2010 Election from the point of issuing the Second Notice. The Association shall initiate this process by **Friday, August 27, 2010** and shall provide

IL Young Choi, Esq.
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the Division with verification thereof. The term of those persons elected at this election shall expire at the time of the next Annual Election.

Please note that, should the Association disagree with, or want to challenge the Division's findings, the Association may request the Division to enter a Notice to Show Cause. If such request is received, or if the Association disputes the Division's findings, the Division may conduct further investigation which may require the production of further documentation and the issuance of a Notice to Show Cause that will provide the Association with an opportunity to dispute the Division's findings and ask for a hearing.

Failure to reply to this letter, take corrective action as may be requested herein, or a repeated violation of the same or a similar nature within two (2) years from the date this violation is resolved, will result in the initiation of an enforcement action by the Division and the possible imposition of a civil penalty up to \$5,000.

Please forward a copy of this letter to the Association and advise the Association that , as per rule 61B-23.002(7)(b)1., Florida Administrative Code, it is required to retain this letter, or a copy thereof, among its official records for future reference.

If you have any questions regarding the foregoing, please contact me at 954-202-3982, Extension #206 or by email at the email address indicated above.

Sincerely,



Carl M. Hecht
Investigation Specialist II
Bureau of Compliance-Fort Lauderdale

Enclosures:

Ozgur Asvar Affidavit
Volkan Bozdogan Affidavit
Foreclosure Unit Document
Statement of Voting Results
Outer Envelopes reflecting Vote by Power of Attorney
Owners Name Document