



## Homeowners take over struggling East Naples development

BY AISLING SWIFT

NAPLES — A day after a “hostile takeover” at South Bay Plantation Condominiums, its newly elected homeowner association president began tracking down how much money is owed by delinquent renters, homeowners and the developer.

At a nearly two-hour meeting Monday night, Joseph P. Sheehan of Marco Island, who rents out his unit, was elected board president and secretary of the homeowners association, and Jose L. Nolasco was elected vice president and association treasurer for the struggling 240-unit development off Rookery Bay Road in East Naples.

“The board has now been turned over,” attorney Ben Solomon, of Association Law Group of Fort Lauderdale, told the roughly two dozen residents gathered in the empty clubhouse as they clapped and cheered. “You’ve got a great board in place. They’ve got their arms around a lot of the issues.”

Both have financial backgrounds. Nolasco is a banker, while Sheehan retired from AT&T, where he set up new businesses.

The turnover occurred after Solomon’s partner, David Arnold, went to court Friday to argue against an attempt by receiver Marika Tolz to block the annual meeting, election and turnover.

Collier Circuit Judge Hugh Hayes denied Tolz’s motion for an emergency injunction, allowing Sheehan and Nolasco to create a majority on the board. Tolz, the sole board member, was appointed receiver in January and remains on the board.

“This was kind of like a David versus Goliath,” Solomon said after the nearly two-hour meeting, likening it to a hostile takeover. “The receiver was in control, so it was an uphill battle. She had a pretty big firm on her side.”

Tolz was represented by attorney Maurice “Manny” Garcia of Greenspoon Marder in Fort Lauderdale. He declined comment on the case, which is still pending — although the main

issue was control.

Residents applauded Sheehan, who sought the help of Solomon’s firm, which specializes in helping ailing developments. Homeowners paid roughly \$3,000 through contributions of \$25 to \$100, but the firm did most of the work for free.

“I think it’s one major step for the homeowners,” said Dennis Berthold of New York, who rents out the unit he owns with his wife Barbara. “We’re extremely satisfied, but disappointed with the turnout by homeowners.”

A smiling Bonnie Albright said she was “happy, happy, happy,” and added: “Something needed to be done.”

Nolasco called it the first step. “It’s important for all owners to have a voice,” he said.

“We all have a stake in improving the community.”

Tolz was appointed receiver two months after Ocean Bank began foreclosure proceedings against developer Robert Wolfarth, whose company, South Bay Plantation Associates LLC, borrowed \$27 million in 2005 for a condo conversion.

The wealthy Miami businessman was unable to sell 130 units and still owes about \$12 million. Over the years, he racked up liens for not paying pool firms, landscapers and other maintenance costs. South Bay was one of three Florida developments he abandoned, leaving lawns not mowed, pools dirty, and other problems.

For five years, homeowners were unable to obtain an accounting of how he spent their fees. Tolz also hadn’t provided an accounting despite demands.

“Associations don’t realize they can pursue their own legal remedy,” Solomon said.

“They’re given bad legal advice that the lender will take care of their fees.”

In September, S3 Association Management LLC of Davie filed a motion asking Collier Circuit Judge Cynthia Pivacek to appoint a blanket

receiver. S3, the South Bay Plantation manager for about 1 1/2 years, wanted the right to rent out abandoned units and collect rents from tenants leasing from investors who aren’t paying homeowner association fees.

Of the 110 units Wolfarth sold, S3’s motion said, only 35 homeowners continued paying monthly association fees. Meanwhile, the development’s monthly operating costs and expenses totaled \$34,039, while the association collects only \$17,000 and was owed about \$158,000 in delinquent assessments.

But that motion was never heard and on Nov. 6, Tolz filed her motion to block the takeover.

Solomon’s law firm was the first in the state to begin pursuing blanket receiverships as a way to collect delinquent condo accounts. It’s a strong weapon that’s expected to be used increasingly throughout Florida after a Third District Court of Appeal ruling in July upheld a Miami-Dade circuit judge’s order against Wolfarth.

After the appeals ruling, the circuit judge ordered him to turn 15 units over to the Village at Dadeland Condo Association to be rented out and to hand over rent checks he’d collected.

South Bay Plantation homeowners contended Tolz exacerbated their financial situation by not pursuing huge debts Wolfarth and delinquent owners owed for nearly a year. As a result, South Bay suffered huge financial losses and property values plunged.

On Tuesday, Sheehan said he was contacting S3 to obtain records of delinquent accounts, vendors and other accounts. However, he said S3 had filed liens against 78 homeowners, 38 of whom he knew were current on payments.

“Unless we have that information, we can’t do a lot,” Sheehan said, adding that he also was contacting homeowners who had withheld association fees in protest for about six months.