

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - February 07,2008**

EVENT DATE: 02/08/2008 EVENT TIME: 10:30:00 AM DEPT.: C-61

JUDICIAL OFFICER: John S. Meyer

CASE NO.: 37-2007-00083383-CU-JR-CTL

CASE TITLE: WARWICK VS. PROMOTE LA JOLLA INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Judicial Review - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT

/DATE FILED:

Plaintiffs Nancy Warwick and Bob Collins brings this petition under Corporations Code section 7616 to challenge the October 2007 election for directors who are to serve on the Board of Directors for the 2008/2009 term. Defendant Promote La Jolla, Inc., opposes the petition.

Both parties raise objections to evidence submitted in support and in opposition to the petition. The Court sustains those objections to evidence relating to the parking issue; the pros and cons of the parking issue are not relevant to the Court's determination. The pages from websites for the business entities that employ Mr. Rizzi and Ms. Tihanyi are also not relevant. It is undisputed that Rizzi and Tihanyi are not Regular members and not qualified to hold the position of Director under the Bylaws. All other objections are overruled.

Taking into consideration the relevant evidence and the Bylaws of Promote La Jolla, Inc., the Court makes the following determinations:

The Board violated the Bylaws by nominating two people who were not eligible to hold a director position. Nominees Rizzi and Tihanyi should not have been on the election ballot. [Bylaws, Art. V, §1(b)(i), p. 3; Art. VIII, §2, p. 16] The Board violated the Bylaws by failing to hear plaintiffs' protest of the election at the November 14th Meeting. [Bylaws, Art. VII, §1(c), p. 14; 9/24/07 Minutes; 11/14/07 Minutes] The Board violated the Bylaws by purporting to fill vacancies on the Board that were not the result of resignations. Rizzi and Tihanyi's purported resignations occurred prior to the election results being confirmed and prior to the commencement of the 2008/2009 term. They could not "resign" positions they never held. [Bylaws, Art. VII, §1(c), p. 14; Art. VIII, §2, p. 16; Art. VIII, §3, p. 17; Art. VIII, §4(c), p. 18]

The Bylaws contemplate vacancies be filled by appointment by the Board of Directors until the next election. "[I]f any annual meeting is not held or the Directors are not confirmed at any annual meeting, the Directors shall hold office until expiration of the term for which elected and until a successor has been elected and qualified." [Bylaws, Art. VIII, §3, p. 17] The Bylaws contemplate directors be elected, seven or eight at a time, on a ballot containing at least that many eligible members. "Candidates for Board of Directors receiving the highest number of affirmative weighted votes from eligible regular Members shall be elected." [Bylaws, Art. VII, §1(c), p. 14; Art. VIII, §2, p. 15]

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Inasmuch as Rizzi and Tihanyi were not eligible to serve as Directors and could not be qualified as properly elected, they could not properly receive votes. Hence, the candidates who received the "highest number of affirmative weighted votes" in the October 2007 election includes Plaintiffs Warwick and Collins.

THEREFORE, the petition brought by Plaintiffs Nancy Warwick and Bob Collins is GRANTED. Pursuant to Corporations Code section 7616(d), the Court determines that Plaintiffs Nancy Warwick and Bob Collins are entitled to hold the offices of Directors on the Board of Directors for the 2008/2009 term.