

1 the issue of Respondent's increase of assessment was not raised in the Justice Court
2 matter.

3 During oral argument, Petitioner acknowledged that there was no factual issue
4 that the increase of assessment he is challenging in the instant proceeding occurred in
5 August 2003 and that he became a unit owner and member of Respondent in February
6 2007.

7 Petitioner raised a counter-claim in the Justice Court matter that addressed the
8 Villas' failure to respond to his requests for financial information. That counter-claim
9 was dismissed. It was undisputed that during the Justice Court trial the Villas presented
10 evidence as to the assessments and referred to the same provisions of the Villas'
11 Declaration of Covenants, Conditions and Restrictions that are cited in the Petition.

12 Having reviewed the documents presented by the parties with respect to the
13 Motion to Dismiss and consideration being given to the arguments presented by the
14 parties, the Administrative Law Judge concludes that that the issue of whether the
15 Respondent had authority to increase the assessment raised in the Petition was integral
16 to the judgment awarded Respondent in the Justice Court matter. Consequently, the
17 legal doctrines of res judicata and collateral estoppel apply to preclude Petitioner from
18 having the issue set forth in the Petition determined in the instant proceeding and
19 warrants dismissal of the Petition.

20 Additionally, based on the well known and long standing principle of standing,
21 Petitioner cannot raise the issue of the Villas' action to increase the assessment
22 because such action took place prior to him becoming a unit owner or member of the
23 Villas. Consequently, Petitioner was not affected by such act at the time it occurred and
24 lacks standing to contest an act that took place prior to him being in a position to
25 challenge such act.
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2 **ORDER**

3 **THEREFORE,**

4 **IT IS ORDERED** granting the Motion to Dismiss; Petitioner's Petition in the
5 instant matter is dismissed and this matter is vacated from the docket of the Office of
6 Administrative Hearings..

7 This order is the final administrative decision and is not subject to a request for
8 rehearing pursuant to § 41-2198.02(B).

9 Done this day, March , 2008.

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11 _____
12 Lewis D. Kowal
13 Administrative Law Judge

14 Copy mailed this ____ day of
15 _____, 2008 to:

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