

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

IN RE: PETITION FOR ARBITRATION

**CHATEAU LA MER CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2006-00-8508

UNIT OWNERS VOTING FOR RECALL,

Respondent.

SUMMARY FINAL ORDER

This final order is entered pursuant to Rule 61B-50.119(3), Fla. Admin. Code, which provides that “[a]t any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.”

BACKGROUND

On February 15, 2006, the petitioner, Chateau La Mer Condominium Association of Jacksonville, Inc., (association) filed a “Recall Arbitration Petition” (petition), pursuant to Section 718.112(2)(j)3., Florida Statutes, seeking a final order affirming its decision not to certify the recall of board members. The petition identified Veronica McCormick, as the respondent’s designated representative. The petition was filed with the Department of Business and Professional Regulation, Division of Florida Land Sales,

Condominiums, and Mobile Homes (division) and was assigned to Diana A. Grubbs, Arbitrator. On March 22, 2006, the case was reassigned to the undersigned arbitrator.

In accordance with Rule 61B-50.105(7), Fla. Admin. Code, on February 24, 2006, an Order Requiring Answer to Petition For Recall Arbitration" (order) was issued. The order, along with a copy of the petition and exhibits attached to the petition, were sent by certified mail to respondent. The order indicated in bold type, that respondent's answer to the petition was required to be filed within 14 days of respondent's receipt of the order. The order stated that the answer must identify all facts alleged in the petition that the respondent disputed and that, if the respondent failed to file an answer, the facts alleged in the petition would be presumed to be true.

Respondent's representative received the order on March 2, 2006; therefore, the answer was due to be filed on or before March 16, 2006. The respondent did not file an answer to the petition or any other paper or pleading; therefore, this order is entered based on the facts alleged in the Recall Arbitration Petition and the information set forth in the exhibits attached to the petition.

FINDINGS OF FACT

1. Petitioner, Chateau La Mer Condominium Association, Inc., is a not-for-profit corporation, established to maintain, manage, and operate the condominium property pursuant to Section 718.111, Fla. Stat.

2. Pursuant to section 718.112, Fla. Stat., respondent consists of a group of unit owners who voted for recall.

3. The petitioner is a condominium association with 58 voting interests. Pursuant to section 718.112(2)(j)1., Fla. Stat., 30 units must vote in favor of a recall for it to be effective.

4. The attempted recall was by a recall meeting held on Saturday, February 4, 2006. At the recall meeting board, member Barbara Shorter received 26 votes for recall and 1 against recall. Recall votes were also held regarding board members Carol Benton and Barbara Wilcox; however, the minutes of the meeting did not contain the number of votes for or against recall for either of those board members.

5. On February 9, 2006, a properly noticed board meeting was held to address the recall meeting. As reflected in the minutes of the board meeting, the board determined not to certify the recall because:

a. The Notice for the Special Homeowners Meeting did not comply with the requirements set forth in Section 61B-23.0027, Fla. Admin. Code, as the notice did not: (1) list by name each board member sought to be recalled at the meeting; (2) list eligible persons who were willing to be candidates for the replacement board members; and (3) attach a copy of the signature list.

b. While the recalling unit owners provided the board with copies of the minutes of the meeting; they did not provide the board with ballots or proxies, or any other recall documentation.

c. The results of the votes at the recall meeting indicate that the required 30 yeas votes to qualify for an effective recall vote was not established.

CONCLUSIONS OF LAW

The arbitrator has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 718.112(2)(j)3. and 718.1255, Fla. Stat. Section 718.112(2)(j), Fla. Stat., provides that any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by the majority of all the voting interests.

Pursuant to rule 61B-50.105, Fla. Admin. Code, a copy of the petition for recall arbitration and the attached written agreement was sent to the respondent along with the Order Requiring Answer. The respondent was notified in the order that if the respondent failed to answer the petition that it would be presumed that the respondent did not dispute the facts alleged in the petition. The respondent did not answer the petition.

While the petitioner specified several reasons for not certifying the recall vote, it is unnecessary to address those reasons, as an insufficient number of votes were cast to recall any of the named board members. Where less than a majority of the voting interests vote in favor of the recall the named board members, the recall effort does not substantially comply with Section 718.112(2)(j), Fla. Stat., and can not be certified. See, Clarcona Resort Condominium Assoc., Inc. v. Unit Owners Voting for Recall, Arb. Case 01-3640, Summary Final Order (November 21, 2001).

Therefore, based on the foregoing, it is

ORDERED:

In the instant case, the respondent has not disputed the association's allegation that less than a majority of the voting interests voted to recall board members Barbara Shorter, Carol Benton, and Barbara Wilcox; accordingly, the association's decision not to certify the recall is AFFIRMED.

DONE AND ORDERED this ____ day of March, 2006, at Tallahassee, Leon County, Florida.

Tonya S. Chavis
Arbitrator
Department of Business and Professional
Regulation
Division of Land Sales, Condominiums and
Mobile Homes
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on the ____ day of March, 2006.

Raymond F. Newman, Jr., Esq.
Becker & Poliakoff, P.A.
348 Miracle Strip Pkwy SW
Paradise Village Suite 7
Ft. Walton Beach, Florida 32548-5253
FAX: 850.664.7882

Veronica McCormick
3795 Scenic Highway 98
Destin, Florida 32541

Veronica McCormick
89 N. Lake Drive
Cape Girardeau, MO 63701

Tonya S. Chavis
Arbitrator
Department of Business and
Professional Regulation
Division of Land Sales, Condominiums
and Mobile Homes
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029