

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

IN RE: PETITION FOR ARBITRATION

**CRYSTAL VILLAS OWNERS
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2006-01-1931

UNIT OWNERS VOTING FOR RECALL,

Respondent.

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SUMMARY FINAL ORDER ON PETITION FOR RECALL ARBITRATION

Rule 61B-50.119(2), Florida Administrative Code, provides: "At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition."

On March 2, 2006, the petitioner, Crystal Villas Owners Association, Inc., filed a petition for recall arbitration with the Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), and it was subsequently assigned to the undersigned arbitrator. The association, by filing the petition for recall arbitration as required by section 718.112(2)(j)3., Florida Statutes, seeks a final order affirming its decision not to certify the recall. The group of unit owners who voted to recall the board members was named as the respondent in this action in accordance with section 718.112(2)(j)3., Florida Statutes (2003) and rule 61B-50.107(3), Florida Administrative Code.

In accordance with rule 61B-50.105(7), Fla. Admin. Code, on March 7, 2006, an Order Allowing Answer to Petition for Recall Arbitration and a copy of the petition was sent to Ruby Vitolo, as the unit owner representative. On March 14, 2006, the respondent filed its answer. This order is entered based on the undisputed facts alleged in the petition for arbitration, including attachments, and the respondent's answer and attachments.

Crystal Villas, A Condominium, is located in Okaloosa County. Crystal Villas Owners Association, Inc., (association) is the condominium association that manages the condominium. There are three members on the board of administration of the association. There are 27 voting interests in the association. To recall the board of directors or any particular board member, the majority of the voting interests must vote in favor of the recall. Therefore, the owners of 14 units would have to vote in favor of the recall for it to be valid.

On February 16, 2006, a written recall agreement containing 15 ballots was served on the board of directors. Each ballot sought the recall of board members Tappan Brannon and Jerry Adams, and each ballot contained votes for Colleen Anson and Dick Wadas as the replacement board members. There were no votes to retain either board member on the ballots submitted.

A board meeting was held on February 23, 2006, at which time the board voted not to certify the written recall agreement. The minutes of the board meeting state that the recall agreement was not certified for two reasons, only one of which is now in question. First, the recall ballot executed by Robert T. Tonti was declared void because he was no longer a member of the association at the time the association was served

with the recall agreement. His unit had been sold to Alicia Voll on February 13, 2006, and the Warranty Deed reflecting the sale was attached to the petition for arbitration. The respondent did not dispute the board's determination that Mr. Tonti's ballot was invalid due to the sale of the unit.

The board also rejected the ballot of John Staed, the third board member, who executed a ballot and then subsequently attempted to withdraw it. On February 21, 2006, five days after the recall agreement was served on the board, Mr. Staed sent an email to all board members and the manager rescinding his recall ballot. However, that rescission was ineffective as it was served on the board after the written recall agreement had been served on the board. See e.g. *Ashley Arms Condo. Ass'n v. Unit Owners Voting for Recall*, Arb. Case No. 2004-04-6644, Summary Final Order (October 29, 2004); *Bal Harbor Chateaux Condo. Ass'n v. Unit Owners Voting for Recall*, Arb. Case No. 2004-02-6220, Summary Final Order (June 11, 2004). The board recognized the problem with the attempt to rescind the ballot on February 21, 2006, and therefore determined that Mr. Staed's ballot had been properly rescinded by an email sent by Mr. Staed to Ms. Vitolo, the unit owner representative, on February 10, 2006. The email stated:

Ruby,

I regret that this comes now, because you will receive a good packet in the mail that should take care of the condo complex and have it ready for the summer, at last. That's providing owners approve the special assessments, which can't be avoided.

I am concerned a new board would void everything we've finally gotten done (after much fussing and Marcia's hard work). I don't want to undermine the proposals we have now. I'd rather now approach this by adding two members to the board, who can vote to remove tappan [sic] as president. I need a garauntee [sic] that there will not be anything done to

undermine the proposals now before the owners. Otherwise, I am thinking of withdrawing my ballot.

Let me know your thoughts,
John Staed

The email sent on February 21, 2006, to the other two board members and the property manager stated as follows:

Jerry, Tappan, Marcia,

If I am unable to reach you on Thursday, I'd like to go ahead and let my wishes be known about the recall. I vote not to certify the recall election and ask that the issue be forwarded to an arbitration panel.

I also plan to notify Ruby that I wish to rescind my earlier vote on the recall.

Thanks,

John Staed

As asserted by the respondent, Mr. Staed did not state in the February 10, 2006, email that he wished to withdraw his ballot or rescind his recall vote. He clearly stated that he was "thinking of withdrawing" his ballot. The February 21, 2006, email only verifies that the February 10, 2006, email was not intended as a withdrawal of Mr. Staed's ballot because he advised the board members that he planned to notify the unit owner representative, Ruby, that he wished to rescind his earlier vote on the recall. Had he already withdrawn his ballot or rescinded his vote on February 10, 2006, he would not need to "notify Ruby" on February 21st of his wish to rescind his "earlier vote on the recall."

Because Mr. Staed's recall ballot was not effectively withdrawn, revoked, or rescinded prior to the time the recall agreement was served on the board, his ballot must be considered as part of the recall agreement. An individual unit owner cannot rescind or withdraw his or her ballot after the written recall agreement has been served on the board. See, e.g. *Fla. Admin. Rule 61B-23.0028(1)(k); Barwood Condominium III*

Ass'n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 02-4680, Summary Final Order Certifying Recall (April 11, 2002). Once a recall agreement is served on the board, the individual ballots “become, in effect, fused together as the recall agreement, which then cannot be altered” by unit owners withdrawing ballots from it or adding ballots to it. *Barbizon Condo. Ass'n v. Unit Owners Voting for Recall*, Arb. Case No. 2005-04-9421, Summary Final Order (November 22, 2005).

Because the ballot was not withdrawn before service of the agreement on the board, the ballot submitted by Mr. Staed must be counted. Counting Mr. Staed's ballot, there was a total of 14 votes—a majority of the voting interests—in favor of the recall of Tappan Brannon and Jerry Adams

Therefore, based on the foregoing, it is

ORDERED:

The recall of board members Tappan Brannon and Jerry Adams is hereby **CERTIFIED**. The recall is effective immediately. As a majority of the board has been recalled, the replacement board members, Colleen Anson and Dick Wadas shall immediately take the seats of the recalled board members in accordance with rules 61B-23.0028(3)(b)4. and (6)(d), Florida Administrative Code. Any association records in the possession of either of the recalled board members shall be given to the new board of directors within five (5) days from the date of this order.

DONE AND ORDERED this 14th day of April, 2005, at Tallahassee, Leon County, Florida.

Diane A. Grubbs, Arbitrator
Dep't of Business & Professional Regulation
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 summary final order has been sent by U.S. Mail to the following persons on this 14th day of April, 2005:

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