

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

IN RE: PETITION FOR ARBITRATION

**Harbour Hall Inlet Club II
Condominium Association, Inc.,**

Petitioner,

v.

Case No. 2006-00-0895

Unit Owners Voting For Recall,

Respondent.

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SUMMARY FINAL ORDER

This final order is entered pursuant to Rule 61B-50.119, Florida Administrative Code, which requires the arbitrator, at any time after the filing of the petition and where no disputed issues of material fact exist, to 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.

On December 29, 2005, Harbour Hall Inlet Club III Condominium Association, Inc. (the association), filed a petition for recall arbitration. The unit owners who voted to recall the board members are the respondent in this action in accordance with section 718.112(2)(j)3., Florida Statutes, and rule 61B-50.107(3), Florida Administrative Code. By order dated January 10, 2006, the respondent was permitted fourteen (14) in which to file response to the petition. As of the date this order, the respondent has not filed an answer.

On December 14, 2005, the association was served with a written recall agreement seeking to recall three of the five members of the association's board of directors as follows: Steve Young, Robert Kruse and Michael Debree. The association's board of directors held a meeting on December 20, 2005, to consider the recall. The minutes indicate that board chose not to certify the recall as to Robert Kruse. The minutes allege that there were two ballots submitted by unit 110 and the recall ballot for unit 108 was forged. The minutes also indicate that director Steve Young resigned. The minutes fail to address the attempted recall of Michael Debree.

As there are forty (40) voting interests in the association, a minimum of twenty-one votes are necessary to recall a board member. The recall agreement contained twenty-two ballots voting in favor of recalling Robert Kruse. Of these ballots, two were duplicative, unit 110 having improperly submitted two ballots. Therefore, only one of the ballots will be considered valid. Furthermore, the association has alleged that the owner of unit 108 has indicated that she did not sign the ballot; rather, her signature was forged. The respondent has failed to dispute this allegation. Therefore, the undersigned finds that this ballot was properly rejected. Taking into account the properly rejected ballots, there are an insufficient number of votes to recall Mr. Kruse.

Although not germane to the decision in this case, as the petition only challenges the recall effort as to Mr. Kruse, the undersigned will discuss the other two directors subject to the recall. The board minutes indicate that Director Steve Young resigned. Therefore, any attempt to recall Mr. Young became moot upon his resignation. The remaining board members may appoint a person to fill the vacancy, as a majority of the members remain on the board.

The minutes of the recall meeting and the recall petition fail to address the attempted recall of Michael Debree. This might be because the written recall agreement did not contain a sufficient number of votes to recall Mr. Debree, even if all the ballots were presumed to be valid. However, the better practice is to state in the minutes and petition why the board found that the recall failed as to each specific board member subject to the attempted recall. Rule 61B-50.105(5)(h), Florida Administrative Code, provides that any specific reason upon which the board bases its decision not to certify the recall that is stated in the petition for recall arbitration, but absent from the board meeting minutes or attachments thereto, shall be ineffective and shall not be considered by the arbitrator. Moreover, where the minutes are silent as to the board's decision regarding the status of a director, it will be presumed that the board failed to timely address the recall of that director and the arbitrator may deem that the recall is certified in accordance with section 718.112(2)(j), Florida Statutes. However, where the recall effort is void *ab initio* due to a fatal flaw in the form of the agreement or where it is clear it has not been approved by the majority of the voting interests, the recall agreement will not be certified. See Unit Owners Voting For Recall v. Sunrise Towne Preferred Condo. Assoc., Inc., Arb. Case No.01-2864, Summary Final Order (May 15, 2001) see also See Gateland Unit Owners Voting for the Recall of Culotta, Arb. Case No. 98-5247, Amended Summary Final Order (January 25, 1999); Villa Biscaya Jardines Condo. Phase II, Inc. v. Castillo, Arb. Case No. 98-3936, Summary Final Order (May 14, 1998); Laguna Club Condominium Assoc, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 99-1335, Summary Final Order (July 30, 1999). In the instant matter, the attempted recall of Michael Debree is void *ab initio*, since it is clear the recall of this

board member has not been approved by a majority of the association's voting interests.

Therefore, based upon the foregoing, it is ORDERED:

The decision of the board not to certify the recall of the board member Robert Kruse is hereby APPROVED and AFFIRMED.

DONE AND ORDERED this 7th day of February, 2006, at Tallahassee, Leon County, Florida.

James W. Earl, Arbitrator
Arbitration Section
Department of Business and
Professional Regulation
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. to the following persons on this 7th day of February, 2006, as indicated below:

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