

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

IN RE: PETITION FOR ARBITRATION

**The Hemispheres Condominium
Association, Inc.,**

Petitioner,

v.

Case No. 2006-00-2745

Unit Owners Voting For Recall,

Respondent.

_____ /

SUMMARY FINAL ORDER

This final order is entered pursuant to rule 61B-50.119(3), Florida Administrative 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.”

PROCEDURAL HISTORY

On January 17, 2006, The Hemispheres Condominium Association, Inc. (the association) filed a petition for recall arbitration. The group of unit owners who voted to recall the board members was named as the respondent in this action. In accordance with rule 61B-50.105(5), Florida Administrative Code, a copy of the petition was sent to the respondent’s representative, along with the arbitrator’s order allowing answer on January 24, 2006. The order allowing an answer gave the respondent fourteen days from the date of the respondent’s receipt of the order in which to file a response to the

petition for arbitration. The respondent's representative received the order allowing answer and the petition for recall arbitration on January 28, 2006. As of the date of this order, the respondent has not filed an answer to the petition. This order is entered accordingly.

DISCUSSION

The Hemispheres Condominium Association consists of 1,308 voting interests. Therefore, a total of 655 votes are needed to successfully recall a member of the association's board. The association alleged that the respondent served it with a written recall agreement on December 29, 2006, that consisted of 683 ballots for the recall of board members Mark Kiser, Gerald Williams, Edward Lesen, Martha Hernandez and David Jacovitz. Attached to the petition were the association's minutes from its January 6, 2006, recall board meeting. The petition and the meeting minutes reflect that the association rejected 32 ballots that were duplicates and another 19 ballots that contained signatures that did not match the names of the owners listed on the association's roster. Additionally, the association rejected 11 ballots because the corporate owners did not have voting certificate on file with the association. Finally, the association rejected one ballot because the signature did not match the signature on file with the association. After reviewing and tallying the ballots, the association determined not to certify the recall because none of the subject board members received enough votes to recall them from board. These facts, as alleged, have not been disputed by the respondent.

The board's meeting minutes and the copies of the ballots attached to the petition for arbitration reflect that the association properly rejected 32 duplicate ballots for units 4C, 5J, 8M, 9N, 14L, 18G, 20Q, 21P, 22B, 3L, 4L, 20H, MC, MN, 14P, 2H, 3D, 12B, 14M, PHF, 2J, 2K, 2N, 5H, 7C, 7L, 10E, 11S, 12S, 16F, 16H and PHK.

Based on the foregoing, it is unnecessary to make any finding as to the propriety of the board's rejection of the remaining ballots identified in the petition for arbitration, as there were clearly an insufficient number of ballots to successfully recall board members Mark Kiser, Gerald Williams, Edward Lesen, Martha Hernandez and David Jacovitz.

WHEREFORE, the association's decision not to certify the recall of board members Mark Kiser, Gerald Williams, Edward Lesen, Martha Hernandez and David Jacovitz is hereby affirmed.

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

Catherine Bemby, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing summary final order was sent by U.S. mail, postage prepaid, this 7th day of March 2006, to:

Laura M. Manning, Esquire
Siegfried, Rivera, Lerner,
De La Torre & Sobel, P.A.
515 North Flagler Street, Ste. 701
West Palm Beach, Florida 33401

Adrienne Ellis
1985 S. Ocean Drive, #2L
Hallandale Beach, Florida 33009

Catherine Bemby, Arbitrator