

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

IN RE: PETITION FOR ARBITRATION

**International Studio Apartment
Association, Inc.,**

Petitioner,

v.

Case No. 2006-00-0846

Unit Owners Voting For Recall,

Respondent.

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SUMMARY FINAL ORDER

Procedural Matters

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 affirming the board's decision not 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 28, 2006, International Studio Apartment Association, Inc. (the association) filed a petition for recall arbitration. The group of unit owners voting in favor of the recall is the respondent in this matter.

On January 9, 2006, the arbitrator issued an order allowing the respondent to file an answer to the petition within fourteen (14) days of receipt of the order. The order and a copy of the petition were received by the unit owner representative on January

14, 2006. The order allowing answer specifically provided that if the respondent did not file a response that disputed the facts contained in the petition for recall arbitration, the association's facts would be presumed to be true and valid and it was possible that the board's decision not to accept the recall would be upheld. As of the date this order, the respondent has not filed an answer or any other communication with the arbitrator.

FINDINGS OF FACT

1. The association consists of 57 voting interests.
2. On November 29, 2005, three members of the association attempted to conduct what appeared to be a recall by unit owner meeting.
3. On December 12, 2005, the association received via certified mail a copy of the minutes from the recall meeting along with a cover letter and the ballots voted at the meeting.
4. On December 18, 2005, the association's board of directors held a meeting at which time it decided not to certify the recall.
5. The minutes from the December 18, 2005, board meeting indicated that the board declined to certify the attempted recall finding it defective for following reasons:
 - a. The special meeting held on November 29, 2005, was not called by 10% of the voting interest in accordance with section 781.112(2)(j), Florida Statutes and rule 61B-23.0027(1), Florida Administrative Rules. The meeting was only noticed by three unit owners.

b. Prior to noticing the recall unit owner meeting, no signature list was circulated in order to secure the 10% voting interest as required by rule 61B-23.0027(2)(a), Florida Administrative Code.

c. The recall notice did not meet the requirements of section 61B-23.0027(2)(b), Florida Administrative Code, in the following ways:

1) The notice indicated that information on a new election would be discussed after the November 29th meeting instead of indicating that an election would be held at the meeting.

2) The notice did not list each board member sought to be recalled.

3) The notice did not list replacement candidates.

4) The notice did not indicate that nominations for candidates shall be taken from the floor at the meeting.

5) The notice did not attach the signature list of 10% of the voting interests, since such a list was never created.

d. The board found the conduct of the recall meeting flawed for the following reasons:

1) At the meeting approximately 23 persons were in attendance but not all were owners and some were husband and wife. Therefore, there was no quorum present, which is a majority of all voting interests, as required by rule by 61B-23.0027(3)(b), Florida Administrative Code.

2) No person was appointed to receive pleadings or to be the unit owner representative in the event the board disputed the recall.

3) No person was designated to record the minutes of the recall meeting.

4) The ballot used at the meeting was improper, failing meet the requirements of rule 61B-23.0028(1), Fla. Admin. Code, in the following the aspects:

i. The ballot did not list the board members sought to recall, as required by rule 61B-23.0028(1)(a), Fla. Admin. Code, rather it simply indicated that the signatory was agreeing to recall all the board members.

ii. The ballot failed to provide separate spaces so that the voting interests could chose to recall or retain each individual board member as required by 61B-23.0028(1)(b), Fla. Admin. Code.

iii. The ballot failed to include a list of replacement candidates as required by 61B-23.0028(1)(c), Fla. Admin. Code.

iv. The ballots failed to provide a space for the owners' names to be printed as there is a requirement for both the printed named as required by 61B-23.0028(1)(d), Fla. Admin. Code.

v. The ballots failed to designate a unit owner representative as required by 61B-23.0028(1)(f), Fla. Admin. Code.

e. The board found the minutes from the recall meeting insufficient for the following reasons:

1) The minutes improperly indicate that the meeting was called to order but in actuality persons in attendance at the meeting have indicated that it was not called to order.

2) The minutes do not record the person chosen as the presiding officer, the recorder of official minutes and the unit owner representative.

3) The minutes do not reflect that a vote was taken at all with respect to the recall of any one or all of the board members, as no votes were taken at this meeting.

4) The minutes do not reflect the votes taken to elect the replacement board members, as there were not any.

CONCLUSIONS OF LAW

Since the respondent has failed to file an answer disputing any of the facts alleged by the association or presenting any defenses, as indicated in the order allowing answer, the undersigned will presume that the association's account of the recall effort and attachments to its petition are true and accurate. This order is entered after consideration of them.

On November 29, 2005, three members of the association attempted to conduct what appeared to be a recall by unit owner meeting. Procedurally recall by unit owner meetings are governed by rule 61B-23.0027(1), (2) and (3), Fla. Admin. Code. Rule 61B-23.0027(4), Fla. Admin. Code, requires substantial compliance with these subsections. Based upon the above facts, it is quite obvious that the recall effort did not substantially comply with rule 61B-23.0027(1), (2) and (3), Fla. Admin. Code, as it did not meet most of the requirements of these subsections. Therefore, the board correctly choose not certify the recall as a recall by unit owner meeting.

If the recall effort is considered a recall by written agreement, it also fails. The association correctly noted that the form of the ballot used is fatally defective. The form

of the written recall agreement is controlled by rule 61B-23.0028(1), Fla. Admin. Code, with which substantial compliance is required pursuant to rule 61B-23.0028(2), Fla. Admin. Code. The recall ballots failed to comply with all but one of the requirements of rule 61B-23.0028(1). Thus, the ballots are fatally deficient, if they were intended to be part of a written recall agreement.

Based upon the foregoing, it is ORDERED:

The associations' decision to not certify the recall is hereby AFFIRMED.

DONE AND ORDERED this 15th day of March, 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 15th day of March, 2006, as indicated below:

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