

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

**IN RE: PETITION FOR ARBITRATION**

**Lighthouse Village  
Condominium Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2005-06-2869**

**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 16, 2005, Lighthouse 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), Fla. Admin. Code.

On November 23, 2005, the association received a written recall agreement seeking the recall of Jean Stubbs, the president of its board of directors. The association's board of directors held a meeting on December 1, 2005, during which it

determined not to certify the recall, finding flaws with individual ballots and with the form of the ballots in general. There are 110 voting interests at the condominium. Therefore, 56 votes are necessary to recall Ms. Stubbs from the board.

The association asserts that the written recall agreement consisted of 60 ballots voting in favor of the recall. However, it contends that at least four of the ballots should be rejected as duplicative. The respondent contends there are 58 non-redundant ballots. Even assuming that there are 58 non-duplicative ballots, the recall fails for the following reasons.

The association rejected the recall ballot for unit 301 because the unit is owned by Lorraine Morgan and the ballot was signed by June Morgan who was not authorized to vote on behalf of the unit. The ballots for units 1306 and 803 were rejected for similar reasons. Specifically, it is alleged that the recall ballot for unit 1306 was rejected because the unit is owned by the John T. Olsen trust, and the recall ballot was signed by Edwina Olsen who is not a trustee and not authorized to vote for the unit. Likewise, the association contends that the recall ballot for unit 803 was rejected because it is owned by a trust and the ballot was signed by a person other than the trustee.

The respondent does not dispute that the ballots for the above units were not signed by the unit owners or persons authorized to vote for the unit.<sup>1</sup> However, the respondent contends that the association has accepted the signatories in past association votes. Therefore, the respondent argues that the association is estopped from rejecting them in the present recall.

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<sup>1</sup> As to unit 803, the respondent indicates that in 1998, the unit was titled in the name Clara Mirti and the ballot was signed by her husband, Robert Mirti.

The undersigned addressed this scenario in Le Mirage Condo. Assoc., Inc. v. Unit Owners Voting For Recall, Arb. Case No. 2004-03-0921, Summary Final Order (October 21, 2004). In Le Mirage the association rejected a recall ballot signed by the non-owner spouse. The respondent contended that in the past, the association had treated the non-owner spouse as a unit owner, even permitting her to serve on its board of directors. Relying upon prior arbitration cases James Place Condo. Assoc., Inc. v. The Group Members of the Assoc. Seeking Recall, Arb. Case No. 93-0227, Summary Final Order (October 27, 1993)(recall vote by person authorized by unit owner properly rejected where board was not given notice of authority at the time of the recall), and, Serda v. Shores Villas Condominium Assoc., Inc., Arb. Case No. 2004-01-1920, Summary Final Order (August 26, 2004)(the association properly rejected a non-unit owner signed ballot as there was no legal instrument authorizing the non-unit owner to act on behalf of the unit owner), the undersigned concluded that the association's past treatment of a non-owner spouse could not act to validate an otherwise invalid vote in the current matter. The undersigned further noted that the arbitrator in Serda, distinguishes the instance where a non-unit owner signs a ballot from the issue that arises in recall cases where the board selects the recall as an opportunity to begin enforcing its voting certificate requirements, concluding that the voting certificate issue involves at least one of the actual unit owners signing the ballot, whereas a non-unit owner signing the ballot has no colorable authority to act on the behalf of the owners. Finally, the undersigned concluded that the non-owner spouse does not have a sufficient present interest in the unit to allow her to be considered an owner and, therefore, eligible to cast a vote on behalf of the unit. See McWilliam v. Maya Marca

Condominium Association, Inc., Arb. Case No. 2003-09-4468, Amended Summary Final Order (April 12, 2004)(spouse of unit owner of record does not have a present legal interest in the unit).

The status of the recall ballots for units 301, 1306, and 803, are analogous to the recall ballot found invalid in Le Mirage. Accordingly, as in that case, the recall ballots are found invalid in the present case. Thus, even if it were assumed that there were 58 non-duplicative recall ballots, upon excluding the three ballots for units 301, 1306, and 803, there is an insufficient number of votes to recall Jean Stubbs from the board of directors.<sup>2</sup>

Therefore, based upon the foregoing, it is

ORDERED:

The association's decision not to certify the recall effort is affirmed.

DONE AND ORDERED this 18<sup>th</sup> day of January, 2006, at Tallahassee, Leon County, Florida.

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James W. Earl, Arbitrator  
Arbitration Section  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

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<sup>2</sup> As these rejected votes are dispositive of this matter, it is not necessary to address any other votes rejected by the board.

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 and facsimile copy to the following persons on this 18<sup>th</sup> day of January, 2006.

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James W. Earl, Arbitrator