

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

IN RE: PETITION FOR ARBITRATION

**Royal Bahamian Condominium
Association, Inc.,**

Petitioner,

v.

Case No. 2006-04-8220

Unit Owners Voting For Recall,

Respondent.

FINAL ORDER

Statement of the Issue

The issue presented by this case is whether the written recall agreement received by the Association on August 9, 2006, should be certified.

Appearances

For the Association: Scott R. Shapiro, Esq.
 Glazer & Associates, P.A.
 1920 East Hallandale Beach Blvd.
 Suite 806
 Hallandale, Florida 33009

For the Respondent: Gustavo Turtula
 Unit Owner Representative
 1175 N.E. Miami Gardens Dr.
 Unit 702E
 Miami, Florida 33179

Procedural History

On August 8, 2006, Royal Bahamian Condominium Association, Inc. (the Association) filed a petition for recall arbitration. On September 20, 2006, the Respondent filed its answer. A case management conference was held on December 11, 2006, during which the parties were directed to file supplemental information. As to

the dispute that certain signatures on recall ballots did not match the signatures on file with the Association for the unit owners and the allegation that unit owners were coerced into signing the recall ballots, the undersigned indicated that he would permit the Respondent to file notarized affidavits for these unit owners affirming that they indeed signed the ballots and were not coerced. The Respondent filed such affidavits on December 26, 2006. A second case management conference was held on January 19, 2007, during which the undersigned informed the parties that he intended to rely upon the affidavits filed by the Respondent. However, the undersigned informed the parties that the additional number of votes provided by the affidavits were only sufficient to recall board members Robert Klein, Mabel Miller, Armando Andreu, and Mike Aybar. Therefore, a final hearing was scheduled to resolve the status of the recall of the other board members.

A final hearing in this matter was held on January 27, 2007. At the commencement of the hearing, the Association informed the arbitrator that it was withdrawing its objection to recall ballots cast for units owned by more than one person for which there was no voting certificate on file with the Association.

Findings of Fact

1. Royale Bahamian Condominium Association, Inc. is the legal entity responsible for the operation of the Royal Bahamian Condominium.

2. On August 9, 2006, the Association received a written recall agreement consisting of 109 ballots seeking to recall all the members of its board of directors: Robert Klein, Ada Maria Jospeh, Marilyn Mace, Mabel Miller, Armando Andreu, Mike Aybar, and John Moreno.

3. The board members serve staggered terms. The terms of the seats held by Mace, Miller and Joseph expire in March, 2007. The terms of the seats held by Klein, Adnreu, Aybar and Moreno expire in March 2008.

4. On August 16, 2006, the Association's board of directors held a meeting at which it chose to reject thirty of the ballots for various reasons. This order will only address the ballots rejected by the Association that are material to final decision in this matter.

5. The 79 ballots which were accepted by the Association cast the following number of votes in favor of recall for each board member:

- a. Robert Klein – 79
- b. Ada Maria Joseph – 74
- c. Marilyn Mace – 73
- d. Mabel Miller – 79
- e. Armando Andreu – 78
- f. Mike Aybar – 78
- g. John Moreno - 10

6. The Association rejected the ballots for the following units because the unit is owned by more than one person and the person who signed the ballot does not appear on a valid voting certificate and does not own a majority of the unit: 388E, 605E, 407E, 601E, 708E, 501E, 506E, 509E, 709E, 101W, 109W, 111W, 201W, 202W, 211W, 410W, and 702W. However, the Association has withdrawn this claim. Therefore, the undersigned finds that the seventeen ballots for these units are valid.

7. The Association rejected the ballots for units 111E, 408E, 601W, and 701W because the signatures on the ballots did not match signatures on file with the Association. The Respondent has filed notarized affidavits executed by the owners of these units affirming that they did sign the ballots. Furthermore, the signatures on the

affidavits match the signatures on the ballots. Therefore, the undersigned finds that the ballots for units 111E, 408E, 701W and 601W were in fact signed by the unit owners and the association improperly rejected these four ballots. The Association rejected the ballots for units 203W, 405W and 603E claiming that the unit owners were coerced into signing without knowing what they were signing. The Respondent has provided affidavits executed by the owners of these units affirming that were not coerced into the signing the recall ballots and understood what they were signing. Therefore, the undersigned finds that these three ballots are valid and were improperly rejected by the Association.

Conclusions of Law

1. The undersigned has jurisdiction over the parties and subject matter of this dispute, pursuant to sections 718.112(2)(j)3. and 718.1255, Florida Statutes. In accordance with section 718.112(2)(j)3., Florida Statutes, the unit owners voting in favor of the recall are the Respondent in this matter.

2. Section 718.112(1)(j), Florida Statutes, provides that any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. When the ballots that were found to be valid by arbitrator as indicated above are considered each board member subject to the recall, except for John Moreno¹, has received a sufficient number of votes to be recalled. Therefore, as to these directors, the recall should be certified.

3. Since a majority of the members of the board have been recalled, in accordance with rule 61B-23.0028((7)(b), Fla. Admin. Code, the replacement candidates receiving the most votes shall take office and shall fill the vacancies for the unexpired term of the seats which they fill. Accordingly, Gustavo Turtula, Abraham Deleon-Cohen, Esther

¹ Even if all thirty of the ballots rejected by the Association are deemed to have voted to recall Mr. Moreno, there would still be an insufficient number of votes to recall him.

Feder, Tiago Choze, Nina Melamed, and John Vasquez are elected to the board to fill the vacancies created by the recall.

4. As noted above, the directors serve staggered terms. The undersigned finds it appropriate to permit the newly constituted board consisting of John Moreno and replacement board members Gustavo Turtula, Abraham Deleon-Cohen, Esther Feder, Tiago Choze, Nina Melamed and John Vasquez to determine the specific seat each replacement board member will fill. In accordance with rule 61B-23.0028(7(b), Fla. Admin. Code, the replacement board members shall fill the vacancies for the unexpired term of the seats they fill. Specifically, the terms for replacement board members chosen to fill the the seats held by Marilyn Mace, Mabel Miller and Ada Maria Joseph will expire in March, 2007, at which time their seats shall be open for election. Similarly, the terms for the replacement board members chosen to fill the seats held by Robert Klein, Armando Andreu, and Mike Aybar shall will expire in March 2008, at which time their seats shall be open for election.

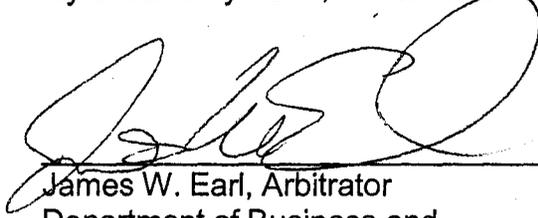
Based upon the foregoing, it is ORDERED:

1. The recall of Robert Klein, Ada Maria Jospeh, Marilyn Mace, Mabel Miller, Armando Andreu, Mike Aybar is hereby certified and they are removed from the board of directors effective upon the date of the mailing this order. Within five days of the date this order, they shall return all association records and property in their possession to the board.

2. Gustavo Turtula, Abraham Deleon-Cohen, Esther Feder, Tiago Choze, Nina Melamed and John Vasquez shall take office effective upon the date of the mailing of this order and shall fill the vacancies caused by the recall for the unexpired term of the seat which they are chosen by the board to fill.

3. Within seven days of the date of this order, the new board of directors shall hold a duly noticed meeting at which they shall determine the specific seat each replacement board member will assume.

DONE AND ORDERED this 29th day of January 2007, at Tallahassee, Leon County, Florida.



James W. Earl, Arbitrator
Department of Business and
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 29th day of January 2007:

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Unit Owner Representative



James W. Earl, Arbitrator