

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

IN RE: PETITION FOR ARBITRATION

**Royal Pines Condominium
Association, Inc.,**

Petitioner,

v.

Case No. 2007-04-0558

Unit Owners Voting For Recall,

Respondent.

_____ /

SUMMARY FINAL ORDER

Statement of Issue

The issue in this case is whether the Association properly chose not to certify a recall submitted as the result of a meeting of the unit owners as reflected in written petitions and proxies. The cover letter used to serve the recall represented a meeting for a recall had been held, and submitted a list of signatures and some proxies of unit owners for the removal of the Board of Directors.

Procedural Matters

On July 9, 2007, Royal Pines Condominium 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 July 19, 2007, 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 served by certified mail on July 21, 2007, on an

individual who addressed the letter conveying the recall documents to the board of directors. On August 7, 2007, Respondent submitted an information package, part of which referred to a subsequent recall effort. This Order is based on the materials provided with the Petition and the materials provided by Respondent except for the facts relating to the subsequent recall.

FINDINGS OF FACT

1. The association consists of 56 voting interests. The board consists of three members.

2. On June 24, 2007, the Association received a letter giving notice that at a meeting on June 24, 2007, certain owners had voted to recall the board members Patricia Thompson and Susan Briggs, a majority of the board, and transmitting a document containing 23 signatures of unit owners and 7 proxy forms.

3. On June 29, 2007, the Association's board of directors held a meeting at which time it decided not to certify the recall.

4. The Minutes from the June 29, 2007, board meeting indicated that the board declined to certify the attempted recall finding that the meeting of June 24, 2007 did not comply with section 718.112(2)(j), Florida Statutes and Rule 61B-23.0027, Florida Administrative Code, for the following reasons:

- a. Ten percent of the voting interests of the condominium did not give notice of the meeting;
- b. The Notice did not accurately state the purpose of the meeting;
- c. The recall did not obtain approval by a majority of all voting interests by a vote at the meeting;

- d. The meeting did not proceed as required with election of a voting representative or designation of a presiding officer;
 - e. The minutes of the June 24, 2007 meeting do not reflect the number of votes cast to recall each director;
5. The Minutes reflect an additional reason that the June 24, 2007 meeting did not obtain a quorum.
6. The Minutes reflect an additional reason that the proxies were improper general proxies.
7. The Minutes reflect an additional reason that signatures of unit owners were collected from people who did not attend the meeting.
8. Although specific to the meeting of June 24, 2007, the proxies are general proxies that do not provide limited instruction as to a particular vote.

CONCLUSIONS OF LAW

1. The arbitrator has jurisdiction of the parties and the subject matter of this dispute pursuant to Sections 718.112(2)(j) and 718.1255, Florida Statutes.
2. Rule 61B-50.119, Florida Administrative Code 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.
3. Section 718.112(2)(j), Florida Statutes, provides the authority and requirements for recall of directors of a condominium association. It provides that recall

may be accomplished by a special meeting of unit owners called by 10 percent of the unit owners, following the procedure for calling a regular meeting of owners. That procedure requires written notice, including an agenda for the meeting, mailed or hand delivered to each unit owner at least 14 days prior to the meeting and posted at a conspicuous place on the property. At the meeting, the recall must be approved by a majority of all the voting interests of the condominium.

4. Section 718.112(2)(j), Florida Statutes, also provides that a recall may be accomplished through an agreement in writing by a majority of all voting interests.

5. Whether by meeting or written agreement, the recall in this case required votes of owners of 29 of the units.

6. Without the proxies, the list of signatures contains only 23 signatures. Section 718.112(2)(d)(3), Florida Statutes, provides, in part, "Proxies shall in no event be used in electing the board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter." To allow a proxy to be used to recall a sitting director would flout the intent of this prohibition.

7. Although proxies may be used to establish a quorum, section 718.112(2)(b)(2), Florida Statutes, provides an additional bar to the use of general proxies for any votes of condominium owners.

8. Because the proxies cannot be counted, the recall effort must fail for lack of a majority of the voting interests, and it is not necessary to address all the reasons given by the board not to certify the recall.

Based upon the foregoing, it is ORDERED:

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

DONE AND ORDERED this 8th day of August, 2007, at Tallahassee, Leon County, Florida.

Bruce A. Campbell, Arbitrator
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 8th day of August, 2007, as indicated below:

Bennett L. Rabin, Esquire
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Bruce A. Campbell, Arbitrator