

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

IN RE: PETITION FOR RECALL ARBITRATION

Sunset Palm Villas Condominium
Association, Inc.,

Petitioner,

v.

Case No. 2005-04-1879

Unit Owners Voting For Recall,

Respondent.

SUMMARY FINAL ORDER

This 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.”

On August 5, 2005, Sunset Palm Villas Condominium Association, Inc. (the petitioner/association) filed a petition for recall arbitration, pursuant to rule 61B-50.105(1)(b), Florida Administrative Code. The group of unit owners who voted to recall the board members was named as the respondent in this case, in accordance with section 718.112(2)(j)3., Florida Statutes, and rule 61B-50.107(3), Florida Administrative Code.

The association consists of 267 voting interests, therefore a minimum of 134 votes are necessary to recall a member of the association's board of directors. The association's petition alleges that the board of directors met on July 29, 2005, after it received a written agreement for recall of board members Felicia Nash and Ramon Canelas. At the recall meeting, the board voted not to certify the recall attempt because of the 143 ballots that were served on the board, 73 of the ballots were rejected because they were not signed by the person(s) authorized to sign on behalf of the unit. This reason was recorded by the board in its minutes from the July 29, 2005, recall meeting. Thereafter, the board filed a petition for recall arbitration.

A copy of the petition for recall arbitration and the attached written agreement was served on the respondent on September 8, 2005, along with the undersigned's August 15, 2005, order allowing answer, and the respondent was given its requested extension of time in which to respond to the recall petition by order dated September 26, 2005. On October 17, 2005, an order to show cause was issued, directing the respondent to file a response or show cause why a final order not certifying the recall should not be entered. The respondent was notified in the order that if the respondent failed to answer the petition, it would be presumed that the respondent did not dispute the facts alleged in the petition. To date, the respondent has not filed an answer or any other communication in response to the association's petition. The facts alleged in the association's petition are therefore deemed admitted and this order is entered accordingly.

The association asserts that of the 143 recall ballots, 73 ballots were invalid because the ballots did not contain the signature of the owners. This allegation

remains undisputed by the respondent. Therefore, the undersigned finds that the association properly rejected the 73 ballots identified in its meeting minutes and petition. See Arlington Park Condo. Assoc., Inc. v. Unit Owners Voting for Recall, Arb. Case No. 2003-05-4942, Summary Final Order (June 5, 2003)(where recall ballot is not executed by the owner of record or someone who is authorized to cast a vote on behalf of the unit, the ballot is properly rejected by the association). As 73 of the 143 written recall ballots were invalid, there is an insufficient number of votes to recall the named board members. The association's determination to not certify the recall is hereby affirmed.

DONE AND ORDERED this 3rd day of November, 2005, at Tallahassee, Leon County, Florida.

Catherine Bembry, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
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, postage prepaid, to the following persons, on this 3rd day of November, 2005.

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Catherine Bembry, Arbitrator