

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

IN RE: PETITION FOR ARBITRATION

**BARBIZON CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2005-04-9421

UNIT OWNERS VOTING FOR RECALL,

Respondent.

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SUMMARY FINAL ORDER

On September 20, 2005, a petition for recall arbitration was filed by the association seeking review of its decision not to certify the recall arbitration agreement served on the association on September 7, 2005.

The recall agreement in this case attempted to recall two out of the three board members: Patricia Brannen and Frank D'Ulisse. At the board meeting on September 13, 2005, the board voted to reject the recall agreement. Among other reasons, the board rejected the recall agreement because 22 of the 27 ballots submitted were pre-marked. A review of the ballots establishes that the ballots were pre-marked with a computer generated "x" in the recall space next to each board member's name.

In its answer to the petition, the respondent admitted that the ballots were pre-marked, but stated that it was only for the unit owners' convenience. Respondent suggested that the department was partially to blame because the recall form on the DBPR website allowed the "x"s to be placed in the recall column. However, after

answering the petition in full, the respondent stated that in the best interest of the condominium, and because a new election would be held shortly, the respondent was withdrawing its recall effort.

As stated in an early order, an individual unit owner cannot rescind or withdraw his or her ballot after the written recall agreement has been served on the board. See, e.g. *Barwood Condominium III Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 02-4680, Summary Final Order Certifying Recall (April 11, 2002). Once a recall agreement is served on the board, the individual ballots or signatures become, in effect, fused together as the recall agreement, which then cannot be altered by individual unit owners withdrawing or adding individual ballots to it. Thus, the responses to the petition for recall arbitration filed by the individual unit owners, attempting to withdraw their ballots from the recall agreement, were stricken by order dated November 2, 2005.

However, the respondent, through the unit owner representative, can withdraw the entire recall agreement at any time after service of the agreement. If the recall agreement is withdrawn after the petition for recall arbitration is filed, the result is the same as if the respondent confessed error. The decision of the board not to certify the agreement will be approved and affirmed.

Therefore, based on the foregoing and the withdrawal of the recall agreement by the unit owner representative, it is

ORDERED:

The decision of the board refusing to certify the written recall agreement submitted to the board on September 7, 2005, is hereby approved and affirmed, and the recall of Patricia Brannen and Frank D'Ulisse is NOT CERTIFIED.

DONE AND ORDERED this 22nd day of November, 2005, Tallahassee, Leon County,
Florida.

Diane A. Grubbs, Arbitrator
Dep't 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 final order has been sent by U.S. Mail to the following persons on this 22nd day of November, 2005.

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Diane A. Grubbs, Arbitrator