

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

IN RE: PETITION FOR ARBITRATION

Islander Club Condominium  
Association, Inc.,  
Petitioner,

v.

Case No. 2005-04-1875

Unit Owners Voting for Recall,  
Respondent.

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**SUMMARY FINAL ORDER**

This final 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.”

**FACTS**

Islander Club Condominium Association, Inc. filed a petition for recall arbitration on August 5, 2005. On August 15, 2005, an order allowing answer was entered allowing the respondent, the unit owners who voted for the recall, to file an answer in the matter. The order advised the respondent that an answer was permitted to be filed within fourteen days of the respondent’s receipt of the order; failing which, the facts contained in the association’s petition would be deemed true and valid. As of the date

of this order, the respondent has not filed an answer or any other pleading in this matter.

According to the petition, the association's management company was served on July 26, 2005, with written recall agreements for the recall of the entire five-member board of directors. There are eighty-eight (88) voting interests in the association; thus, forty-five (45) valid votes are required to recall a board member.

The unit owners are seeking to recall the following board members: Graciela Ayala, Delia Gomez, Holger Lutz, Kathy Smith and Carlos Zuniga. The board conducted a meeting on August 1, 2005, and determined to reject the recall effort. The minutes of the board meeting cite the following reasons for not certifying the recall effort:

- none of the board members subject to the recall effort received sufficient votes to be recalled; and

- the written recall agreements were not properly served on the association.

### **DISCUSSION**

According to the August 1<sup>st</sup> meeting minutes, none of the board members subject to this recall effort received a sufficient amount of votes to be recalled from the board.

The minutes indicate the following as the results from the recall vote:

- Graciela Ayala: 8 votes in favor of recall;
- Delia Gomez: 41 votes in favor of recall;
- Holger Lutz: 42 votes in favor of recall;
- Kathy Smith: 41 votes in favor of recall; and
- Carlos Zuniga: 42 votes in favor of recall.

As none of the board members received the required 45 votes to be recalled, the association argues that it was justified in rejecting the recall effort. Because the unit owner representative did not file an answer in this matter, the votes received by each board member in the recall attempt, as referenced above, are deemed true and valid.<sup>1</sup>

Since the association maintains 88 voting interests and 45 votes are required to recall a board member, none of the board members subject to this recall effort will be recalled as they did not receive the minimum number of votes required to effectuate their removal from the board of directors. Therefore, the recall will not be certified.

It is worth noting that the second reason presented by the board for rejecting the recall attempt is invalid. Service of a written recall agreement on the association's management company is acceptable under rule 61B-23.0028(1)(g), Florida Administrative Code, which provides, in pertinent part, the following:

...Service of the written recall agreement on an officer, association manager, board member or the association's registered agent will be deemed effective service on the association. ...

See also, Nautilus Condo. Assoc., Inc. v. Unit Owners Voting For Recall, Arb. Case No. 99-2076, Summary Final Order (December 3, 1999)(because the purpose of requiring the service of the written recall agreement on the association is to officially place the board on notice that a recall has been attempted by the unit owners, service of the recall agreement on the association's management company substantially complied with service requirements). Furthermore, hand-delivery of recall agreements is also

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<sup>1</sup> The ballots were tabulated by the arbitrator resulting in Graciela Ayala receiving 7 votes, Delia Gomez receiving 40 votes, Holger Lutz receiving 41 votes, Kathy Smith receiving 41 votes and Carlos Zuniga receiving 42 votes. The differences in the voting results do not affect the rulings herein.

permissible. See Bay Tree Patio Homes Condominium Association, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 2004-04-6650, Summary Final Order (January 13, 2005). In this case, while service of the recall agreements was properly effectuated, the recall is not certified based on the failure of the unit owners to obtain a sufficient number of votes to remove any of the board members from the board of directors.

Based on the foregoing, it is ORDERED:

The decision of the board of directors not to certify the recall effort is AFFIRMED. The recall of Graciela Ayala, Delia Gomez, Holger Lutz, Kathy Smith and Carlos Zuniga is not certified.

DONE AND ORDERED this 19<sup>th</sup> day of September 2005, at Tallahassee, Leon County, Florida.

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Melissa Mnookin, 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 19<sup>th</sup> day of September 2005:

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Melissa Mnookin, Arbitrator