

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

IN RE: PETITION FOR ARBITRATION - HOA

WESTBROOK ESTATES  
HOMEOWNERS ASSOCIATION, INC

Petitioner,  
v.

Filed with  
Arbitration Section

Case No. 2010-03-2663

HOMEOWNERS VOTING  
FOR A RECALL,

JUL 22 2010

Respondents.

Div. of FL Condos, Timeshares & MH  
Dept. of Business & Professional Reg.

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**SUMMARY FINAL ORDER**

**Statement of the Issue**

The issue presented for determination is whether the written recall agreement served on the Association's board of directors on June 16, 2010, should have been certified.

**Procedural History**

On June 30, 2010, Westbrook Estates Homeowners Association, Inc. filed a Recall Arbitration Petition, which alleged that the board voted not to certify the recall at a meeting on June 23, 2010.

On July 2, 2010, the designated Owner's representative, Janet Stevens answered the Petition, *pro se*, on behalf of Respondents. Ms. Stevens only asserted that the meeting held on July 23, 2010 did not comply with Section 720.303, Florida Statutes, that requires homeowners be given forty-eight hour notification of any board meeting.

**Findings of Fact**

1. The total number of voting interests in the Association is 422. The board of directors consists of five members.

2. To recall a board member, 212 recall ballots are needed. A total of 217 ballots were served on June 16, 2010, seeking to recall three directors.

3. The directors sought to be recalled and the corresponding number of ballots as to each are:

Aubrey Presha	217
David Kramer	217
Jeff Hanneken	217

4. The replacement candidates are identified as Isaac Totas, Christine Robinson and Chantelle Kelly.

5. On June 23, 2010, the board of directors held a meeting at which the board voted not to certify the recall.

6. The Petitioner admitted in its Reply that it attempted to hold a meeting on June 22, 2010, but no quorum was achieved.<sup>1</sup>

7. Petitioner admits in its Reply that less than forty-eight hours notice was given before the meeting of June 23, 2010. The reason given was that a board member was confused about the date of the June 22, 2010 meeting and that it had to reschedule the meeting to June 23, 2010, to be in compliance with Section 720.303(10)(b)(2),

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<sup>1</sup> It is disputed whether there was proper notice for this attempted meeting. However, according to Section 720.303(2)(a), Florida Statutes, a "meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business." Since there was no quorum, no meeting was held.

Florida Statutes, since June 23, 2010, was the fifth business day after service of the written recall agreements.

8. Petitioner's reasons for not certifying the recall were: nine votes were rejected because the name on the ballot did not match the owner of record; five votes were rejected because two signatures were on the ballot; six votes were rejected because of issues of the markings of the dates on the ballots; and five were rejected because of the signature as the Association was not sure if they were signed by the owner.

### **Conclusions of Law**

The arbitrator has jurisdiction of the parties and the subject matter of this dispute pursuant to Sections 720.303(10) and 718.1255, Florida Statutes.

A Summary Final Order is appropriate in this case pursuant to Fla. Admin. Code R. 61B-80.114(2), which provides that at any time after the filing of the petition, if the parties do not dispute important facts in a case, the arbitrator shall summarily enter a final order denying the relief requested in the petition, if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition.

#### *Failure to Give Proper Notice of the Meeting*

Section 720.303(10)(b)(2), Florida Statutes states: "The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots." (Emphasis supplied).

Section 720.303(2)(c)(1), Florida Statutes, provides that notices of all board meetings must be posted in a conspicuous place in the community at least forty-eight hours in advance of a meeting.

In most cases, failure of the association to comply with the meeting requirements of Section 720.303(10)(b)(2), Florida Statutes shall result in certification of the recall. *Island Cove Villas at Meadow Woods Homeowner's Assoc. v. Owners Voting for Recall*, Arb. Case 2005-01-2789, Summary Final Order (August 23, 2005). The only exception is where the recall agreement is void on the outset because it is fatally flawed in the form of the agreement or where it is clear that the agreement has not been approved by a majority of the voting interests, and the lack of notice does not indicate bad faith on the part of the board. *Id.* See also *Sunrise Towne Preferred Condominium Assoc. v. Unit Owners Voting for Recall*, Arb. Case 01-2517, Final Order On Recall (April 12, 2001).

Arbitration cases hold recalls void *ab initio* where ballot forms conflict with Rule 61B-81.003, or where the recall effort did not obtain enough recall ballots to represent a majority of the voting interests. See *Dieppa v. Lisette Condominium Assoc., Inc.*, Arb. Case No. 2006-01-0911 (March 7, 2006); *Carlton Place Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2003-06-9241, Summary Final Order (August 25, 2003)

In this case, the written agreements use the form adopted by the Division and substantially comply with 61B-81.003 and the total number of ballots is more than 50% of the number of voting interests in Westbrook Estates.

#### *A Majority of the Voting Interests*

The issue, then, is whether the recall effort was “void at the outset for failing to obtain a majority of the voting interests.”

Petitioner contends that this majority of voting interests should not include ballots that were properly rejected by the board because of execution by non-owners or non-

matching signatures. Such an interpretation of the rule would make the phrase "void at the outset" meaningless, and require complete arbitration to consider each ballot for objections in the board minutes and petition for arbitration. Individual ballots may be rejected for many reasons, but an individual ballot cannot be void at the outset.

When the rule requires certification of a recall for violation of section 720.303(10)(b)(2), Florida Statutes, the arbitrator may only reject an individual ballot for obvious defects within the document itself which render the individual ballot facially invalid. Extrinsic evidence may not be considered by the arbitrator. After failing to comply to meeting requirements, a recall must be certified despite claims that certain ballots were pre-marked or forged, because those facts could not be established without looking beyond the four corners of the document. *Sun Isle Condominium Assoc. of Merritt Island, Inc v. Unit Owners Voting for Recall*, Arb. Case No. 2008-05-2748, Summary Final Order (October 31, 2008). In the present case, Petitioner does not allege the facial invalidity of any ballots. The same rule applies to a claim that a ballot was not signed by a unit owner, unless that fact is provable on the face of the ballot.

The count for the majority of the voting interests must include all ballots which are facially valid. The recall effort in this case obtained 217 facially valid ballots, representing a majority of the voting interests.

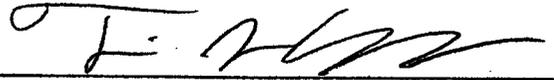
Based upon the foregoing, it is **ORDERED**:

1. The recall of board members Aubrey Presha, David Kramer, and Jeff Hanneken is hereby **CERTIFIED** and they are **REMOVED** as directors effective as of the date of the entry of this order.

2. Isaac Totas, Christine Robinson and Chantelle Kelly shall take seats on the board effective immediately.

3. Within five (5) full business days from the date of this order, Aubrey Presha, David Kramer, and Jeff Hanneken shall deliver any and all records of the Association in their possession to the new board of directors.

DONE AND ORDERED this 22nd day of July, 2010, at Tallahassee, Leon County, Florida.



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Professional Regulation  
Arbitration Section  
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Certificate of Service

I hereby certify that a copy of the foregoing summary final order has been sent by U.S. to the following persons on this 22nd day of July, 2010:

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