

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

IN RE: PETITION FOR ARBITRATION

Sunset Villas Phase III Condominium Association, Inc.,  
Petitioner,

v.

Case No. 2006-03-6578

Unit Owners Voting for Recall,  
Respondent.

FBN: 430889

**RESPONSE TO ORDER TO SHOW CAUSE**

COMES NOW, the designated unit owner representative, hereinafter referred to as "the representative", by and through the undersigned counsel and files this Response.

The Association alleges that the recall issue has become moot due to lack of nominations for a new election. On December 13, 2006 the Association alleges that the elections were to have taken place. The Association Bylaws provides for the procedure which must be followed for the annual meetings and elections and the time frame for same. The Association Bylaws call for the annual meeting to take place the second Tuesday of January and for the elections to take place at the annual meeting. Further the Association must provide timely notice for such meetings and elections. In this matter the Association not only violated the Bylaws by scheduling the meeting on the wrong day but also failed to provide the unit owners with Notice of said meeting. It was not until the Arbitration Department notified the undersigned that the elections were scheduled for December 13, 2006 that the Respondent became aware of the meeting. Attached are copies of the Association Bylaws clearly establishing that the elections are to take place at the annual meeting which is to be held the Second Tuesday of January. Further, the Respondent attaches signatures of Unit owners who affirm that they never received written or electronic notice of the elections. Additionally the meeting was held at the office of All Florida Management Company. All meetings in prior years were held at the Sunset Villas Clubhouse. The Sunset Villas Clubhouse is a rather large area that fits seating for a large group gathering. The location where the meeting of December 13, 2006 was held fit no more than ten (10) people. Coincidentally, only 10 people attended the meeting of which five (5) are on the Board. The Sunset Villas Phase III Association consists of 440 units. An Association consisting of that many units cannot reasonably hold an annual meeting at a location which seats approximately 10 people unless an extremely low turnout is

expected. The fact that only nine attended the annual meeting only strengthens the argument that proper notices were not sent out to the unit owners.

In addition, the Unit Owners argue that the Association was refusing to accept mailings and notices from Unit Owners in anticipation that they were nominations for board positions. One Unit owner attempted a mailing by certified return receipt mail addressed to Marina Ojeda, the Association President, at the association address but said delivery was refused by the Association. A copy of the postal service print out is attached referencing the refusal and return of the item. If in fact the Association was refusing mailings from residents then they prevented the unit owners from properly asserting their rights to nominate candidates for a new Board.

One particular unit owner who attended the annual meeting of December 13, 2006 inquired counsel for the Association about the statutory required mailings and was advised that an Affidavit of mailing had been obtained from the postal service. It is important to note that while the US Postal Service can certify that a bulk mailing to the unit owners was in fact made at some point in time, they cannot certify as to the contents of the envelopes. The Respondent is prepared to present evidence that the Association in fact did make a large bulk mailing to the unit owners on October 13, 2006, however what was contained in said mailing was not notice of an annual meeting but rather a second copy of correspondence addressed to the unit owners regarding their maintenance payments. The correspondence was dated on September 26, 2006 and initially received by most unit owners on or about September 29, 2006. The Association thereafter re-mailed the same correspondence on October 13, 2006 and is now attempting to use proof of these mailings to satisfy the notice requirement of the Florida Statutes. Several unit owners are prepared to testify to this regard and present evidence of the fraudulent mailings.

The Unit Owners should be afforded their right to assert the recall ballots. The alleged elections held were not only held against the Association's own regulations but without proper notice. The Board is attempting to deprive the Unit Owners out of their right to proper representation and vote. Further, the Board is attempting to manipulate the arbitration process in order to prevent recall.

The Unit Owners should be afforded the right to have their recall arguments heard and determined on the merits of the case and not dismiss the Petition on a technicality obtained by the Association itself under false pretenses and questionable management practices. The Unit Owners rightfully asserted their right to recall the Board by serving recall ballots upon the Board. The Board then attempted to silence the Unit Owners filing a recall petition attempting to invalidate legally valid ballots. On the eve of having a decision reached on the recall matter the Association is again seeking to silence the Unit Owners and strip them of their legal rights by depriving them of timely notice and preventing them from voting a new Board into office. Had the Unit owners received timely

notice of the December 13, 2006 elections the Board would have not only received countless nominations but there definitely would have been a larger turn out than 10 at the meeting. It is rather puzzling that the unit owners can gather over 100 signatures in support of this Response and over 200 ballots for recall but the Association cannot get more than 10 residents out of 440 to attend an annual meeting. The sole logical explanation is that proper notice of the meeting was never provided. The unit owners have expended their own funds and time and have exhausted all available options to exert their rights. The association and its Board however have been successful in manipulating the system and the arbitration process through numerous stall tactics and lack of discovery provided so as to thwart the unit owners defense and claims. It is clear by an overwhelming amount of evidence that the alleged meeting and election were not only fraudulent but also a grave violation of the Condominium Bylaws and Florida Statutes. At minimum, the unit owners should be afforded the opportunity to defend their allegations and conclude the process which they have so not only passionately and diligently pursued but also expended countless hours and funds for. In conclusion, in support of the above argument, the Respondent provides the following documentation:

1. Signatures of approximately 110 unit owners who affirm that they never received notice of the annual meeting as required by the Florida Statutes;
2. Copy of the Association Bylaws establishing the day the annual meeting and elections are to be held;
3. Copies of prior notices sent to owners of annual meetings (i.e. 2003, 2004, 2005) This establishes past procedure of the Association and is evidence that this year they departed from past practices. The notices also establish that prior meetings were held at the Clubhouse where large group of unit owners can gather;
4. Postal Service tracking information for refused item addressed to the Association president;

I hereby certify that a true and correct copy was furnished to: Steven A. Fein, Esq., Fein and Meloni, 900 SW 40 Ave, Plantation, Fl. 33317 on December 18, 2006.

By:

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Rosemarie Bacallao, Esq.  
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To: Rosemarie Bacallao

From: Maria Elena Urivazo

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## U.S. Post Office Certification is INVALID!

Mr. Meloni said at the meeting held at All Florida Management on Dec. 13, 2006 that the U.S. Post Office certified that the First Notice was sent out on October 16, 2006 (see last paragraph Meeting Notes attached).

The letter from All Florida Management dated September 26, 2006 was mailed twice to all unit owners which is proven by the following:

- a. Two-page fax sent from S M DEL CONTE on 9/30/2006 (see attached) which includes said letter and the envelope it was mailed in. \*
- b. Letter from Olga Lorie to Marina Ojeda dated October 26, 2006 (see attached English & Spanish versions) proves as described in the first paragraph of her letter that the second envelope received on October 17, 2006 contained the same letter as the one mailed on September 29, 2006.
- c. Copies of both envelopes addressed to Celso & Suyapa Chavez in which said letter was mailed to them twice. \* \*\*
- d. Copies of both envelopes addressed to Maria Elena Urivazo in which said letter was mailed to her twice. \* \*\*

\* Notice the date on the envelope from All Florida Management is September 29, 2006.

\*\* And the date on the envelope from Sunset Villas III is October 13, 2006 (Pitney Bowes stamp machine). They probably took the envelopes to the Post Office to be certified on Oct. 16<sup>th</sup>.