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

IN RE: PETITION FOR ARBITRATION

LAKE AND TENNIS VILLAS CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. **Case No. 2008-02-8195**

UNIT OWNERS VOTING FOR RECALL,

Respondent.
_____/

RECALL FINAL ORDER

On May 12, 2008, Lake and Tennis Villas Condominium Apartments, Inc., (petitioner or association) filed a petition for recall arbitration with the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to rule 61B-50.105(1)(b), Florida Administrative Code, and section 718.112(2)(j)3., Florida Statutes.[1] The petition for recall arbitration substantially complied with rule 61B-50.105(5), Fla. Admin. Code. The group of unit owners who voted to recall the board members was named as the respondent in this action in accordance with section 718.112(2)(j)3., Fla. Stat., and rule 61B-50.107(3), Fla. Admin. Code. The association seeks a final order affirming its decision not to certify a written recall agreement.

BACKGROUND

On May 29, 2008, the petition for recall arbitration was reassigned to the undersigned arbitrator. The respondent's answer was filed the same day. A pre-hearing

[1] The Division is now the Division of Condominiums, Timeshares and Mobile Homes.

conference was held on June 12, 2008, and on June 13, 2008, a pre-hearing order was entered which, *inter alia*, scheduled the final hearing for June 26, 2008; directed the parties to agree on a location for the final hearing, with the instruction that the hearing should be held at the condominium if possible; and directed the petitioner to issue a notice of hearing which included the address of the location chosen and the telephone number at the location. The order also authorized the petitioner to file an amendment to its petition.

On June 19, 2008, an amendment to the petition was filed. An answer to the amendment was filed June 23, 2008. On June 25, 2008, an order was entered canceling the hearing scheduled for June 26, 2008, because the respondent had not agreed to hold the hearing at petitioner's attorney's office, which was the location specified in the notice. The final hearing was held on July 8, 2008, at the condominium clubhouse, with the parties and witnesses appearing in person at the clubhouse and the arbitrator appearing by speaker telephone. Late exhibits were filed on July 14, 2008, and on July 29, 2008, the parties submitted their proposed final orders. This final order is based on the pleadings, the condominium documents, the stipulations of the parties, and the evidence presented at the final hearing.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Petitioner is a condominium association with 110 voting interests. Therefore, to successfully recall a board member by a written recall agreement, 56 valid ballots or votes for the recall must be served on the board. On April 30, 2008, petitioner was served with a written recall agreement consisting of 58 separate ballots seeking the recall of Carlos Carty, Richard Guadalupe and Myriam Lopez from the

board of directors. However, Richard Guadalupe had resigned from the board on April 3, 2008, and the parties agree that, as to his seat, the recall is moot.

2. When the recall agreement was served on the board, there were only four seated board members: Carlos Carty, president; Manuel Rocamonde, Vice-president; Yeline Ramirez, Secretary; and Miriam Lopez, Treasurer. Richard Guadalupe's seat had not been filled. The complete board of directors consists of five members.

3. On May 5, 2008, the board of directors held a meeting to consider the recall agreement. The minutes of the meeting reflect that all four remaining board members were present. The board determined to reject the recall agreement on the following grounds: five replacement candidates were listed on the recall agreement instead of three and the unit owners voted for more replacement candidates than could be seated; forty-six ballots, which the board designated by unit number, appeared to be pre-marked by hand, thus not giving the voter the option to retain or recall each individual director; and twenty-one ballots, designated by unit number, were either not signed by the unit owner or there was no voting certificate on file.

4. By the time of the hearing, the issues had been narrowed to the following:

A. Whether 46 ballots were pre-marked or post-marked by the same person;

B. Whether 9 ballots were properly rejected for the lack of a voting certificate;

C. Whether 8 ballots were properly rejected because the signatures on the ballot were not the signatures of the unit owner.

A. <u>WERE THE BALLOTS PRE-MARKED OR POST-MARKED</u>

5. The board rejected the ballots for 46 units because they appeared to be pre-marked (or post-marked) by hand by the same person. All of the ballots questioned had a hand-written, relatively long, slash mark (/) diagonally across the box where the

unit owner is to place a check mark to recall the board member. The number of ballots with similar marks might call into question whether each unit owner made his own marks or whether the ballots were pre-marked or marked after the fact by the same person. However, the testimony at the hearing on the issue was insufficient to support a finding that the ballots were pre-marked or post-marked.

6. The only testimony presented by the petitioner regarding the pre-marking of the ballots was the testimony of its expert witness, Frank Norwich, a handwriting analyst. He testified that he had not been paid to analyze the marks, so he had given them only a "preliminary" look. He testified that there was a "likelihood" that the marks were not made by different people, but he would not even state that it was "highly likely" that the marks were made by someone other than the individual unit owners. He explained that it would take hours of analysis to be more definite.

7. The unit owners who testified on the issue all stated that they filled-out their own ballots, and they made the marks. Orlando Buergo testified that he personally collected the ballots from the unit owners and watched them make the marks and sign their ballots. He also admitted that, as he went from unit to unit and sat down with the unit owners as they filled-out their ballots, the ballots completed by other unit owners were in plain sight and the marks may have been copied.

8. Not one unit owner testified that the ballot they signed had been pre-marked or was left blank, and no witness testified that he or she had been presented with a pre-marked ballot or was asked to sign a ballot without voting to recall or retain the board members.

9. Therefore, although there seemed to be a disproportionate number of unit owners who marked their ballots with a slash rather than a check mark, there was insufficient evidence presented to find the ballots were pre-marked or post-marked.

B. WERE NINE BALLOTS PROPERLY REJECTED FOR THE LACK OF A VOTING CERTIFICATE.

10. The association rejected the ballots for units 126, 201, 308. 402, 510, 617, 621, 726, and 801 because the unit was owned by two or more persons, who were not married, and they had not submitted a voting certificate as required by the by-laws.

11. Section (2)(c) of the by-laws of the association provides as follows:

> c) The vote of the owners of a CONDOMINIUM UNIT owned by more than one person or by a corporation or other entity shall be cast by the person named in a Certificate signed by all of the owners of the CONDOMINIUM UNIT and filed with the Secretary of the ASSOCIATION and such Certificate shall be valid until revoked by subsequent Certificate. If such a Certificate is not on file, the vote of such owners shall not be considered for any purpose. ...
>
> Whenever any CONDOMINIUM UNIT is owned by husband and wife, absent any notice to the contrary, the husband or wife, as the case may be, shall be treated and regarded as the agent and proxy of the other when in attendance at any membership meeting for the purpose of determining a quorum and casting the vote for each CONDOMINIUM UNIT owned by them without the necessity of filing a Certificate.
>
> ....
>
> e) Approval or disapproval of the CONDOMINIUM UNIT owner upon any matter, whether or not the subject of an ASSOCIATION meeting, shall be by the same person who would cast the vote of such owner if in an ASSOCIATION meeting.

12. Rule 61B-23.0028(3)(b)6., Fla. Admin. Code, provides that "[t]he failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes *shall preclude* the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement." (e.s.)

13. The rule clearly states that the association cannot reject a unit owner's ballot for not having a voting certificate on file unless the association has enforced the

voting certificate requirement in past elections and unit owner votes. The association was unable to present any evidence that the voting certificate requirement has ever been enforced previously, but the association witnesses asserted that was only because there had been no need to check voting certificates in 2007 and 2008 as there were no more candidates for office than there were seats to be filled.

14. Due to a change in the association management, the association had no complete records of any annual meeting, other than the previous two when no election was held due to the lack of candidates. One unit owner, Peter Skartsilas, who had lived at the condominium since 1987, testified that there had been no election for the last five or six years, and he did not recall voting certificates ever being used.

15. The association was able to establish that in the first notice of election for both of the last two annual meetings, the unit owners had been told that a voting certificate was necessary, and a voting certificate form was enclosed with the notice. Both notices contained the following paragraph:

> Also enclosed, please find a Voting Certificate to be used in case your unit is owned by more than one person (other than husband and wife) or by a corporation. This form must be returned to our office at your earliest convenience.

16. The minutes of the annual meeting dated February 19, 2007, include the following:

> A total of 7 voting certificates were received by the Association and will be filed on [sic] each unit owner's file for further reference.
>
> It was noted that the Association only received three (3) nominations to fill the five (5) vacancies on the Board of Directors as required by the Association's By-Laws. As a result, an election was not required.

17. The minutes of the Annual Meeting of January 29, 2008, state, in pertinent part:

> It was noted that the Association only received three (3) nominations to fill the five (5) vacancies on the Board of Directors as required by the Association's By-Laws. As a result, an election was not required.
>
> A total of 9 voting certificates were received by the Association and will be filed on each unit owner's file for further reference.

18. The association's property manager and board secretary testified that the association advised the unit owners each of the last two years before the annual meeting of the need for a voting certificate, as shown above, and that the voting certificates received from the unit owners were preserved as part of the association records. Through their testimony, the association's witnesses attempted to establish that the association had been scrupulously attentive to compliance with the voting certificate requirement. All twenty-four (24) of the voting certificates filed with the association were admitted into evidence.[2] The association moved the certificates into evidence in an attempt to establish that the association had always demanded compliance with the voting certificate requirement, even though votes had never before been rejected for lack of voting certificate.

19. The testimony of the association's witnesses and the statements in the notices and minutes suggest that the association had, to the best of its ability, honored the voting certificate requirement. However, that apparent devotion to compliance was

[2] Of the 24, there are two voting certificates for unit 921 (one date December 2006, one December 2007), two for unit 611(November 2005 and January 2007), and two for unit 305, with different owners in December, 2005 and December, 2007.

belied by a cursory examination of the voting certificates introduced into evidence. Of the twenty-four certificates, which constituted all of the association's voting certificates, none were valid for the intended purpose—not one out of the twenty-four.[3]

20. Only one of the twenty-four certificates contained the signatures of both unit owners, but that certificate was not valid because it did not name the designated voting member. The voting certificates clearly are insufficient for their purpose, yet the association apparently considered them all appropriate voting certificates and filed them away with the unit's file.

21. Because all except one of the voting certificates that the association found acceptable contained the signature of only one of the two unit owners, it was completely illogical for the board to consider a ballot signed by only one of the two unit owners to be invalid.

22. It is apparent that there has been no attempt by the association to properly enforce the voting certificate requirement. As previously stated, in one way or another, not one of the voting certificates is valid on its face. Comparing the association's voting certificates to the roster submitted by the association (Exhibit I) reveals several other problems with the 24 voting certificates.

23. A comparison of the names listed on the "roster," which is dated May 5, 2008, and the 24 voting certificates submitted by the association, establishes that most of the voting certificates appear not to be connected to the persons listed on the association's roster as the unit owners. For example, Kayla Williams is listed on the

[3] It appears that several of the certificates may have been for units owned by only one person, but based on the inconsistencies with the roster, that is impossible to know.

roster as the owner of unit 122. The voting certificate for unit 122 designates, and is signed by, Sergio Delamerens as the unit owner.[4] The voting certificate lists the unit owners for unit 126 as Marc Alfort and Roberto Valcarce; the roster lists the unit owners as "Frank J / Jessica Mata / Sauce." The voting certificate for unit 131 lists the owners as Ferdinand Salls and Carolina Jimeney; the roster lists the owners as "Jose G. / Mercedes Palomino / Lazo." The voting certificate for unit 205 lists Ernesto Lima and Yamile Pedraga as the unit owners; the roster lists "Freddy J ./ Heidy Amador." One of the two voting certificates for unit 305 lists Emele Nasimos and Denise Nasimos as the unit owners; the roster lists Ingrid Polanco, who is the owner listed on the second voting certificate for unit 305.[5] The voting certificate for unit 306 lists Jose Ramon Fernandez and Cardad V. Gomez as the unit owners; the roster lists "Narcizo / Idalia Blanco / Lima." The list goes on and on – in addition to the above, the owners named on the voting certificates for units 420, 510, 515, 516, 602, 605, 611, 621, 920, and 921, do not match the owners listed on the roster. One of the voting certificates does not even designate a unit number. Well over half of the voting certificates entered into evidence were those of people who were no longer unit owners or never were unit owners. Clearly, the association has not been vigilant in enforcing the voting certificate requirement when not one of the certificates entered into evidence as proof of the association's strict enforcement of the voting certificate requirement is valid for a unit owned by two or more persons, and almost 75% of the voting certificates name unit owners who do not match the names of the unit owners on the association's roster.

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[4] Most of the names are not clearly printed (or printed at all) on the voting certificates. So the spelling of the names is a best guess.

24. None of the unit owners who attempted to comply with the voting certificate requirements by filling-out a voting certificate and submitting it to the association were ever advised that their voting certificate was not properly completed. None were informed that they would not have a vote due to an incomplete voting certificate. Indeed, all of the voting certificates accepted by the association and submitted into evidence to establish the association's compliance with section 2(c) of the by-laws were invalid. Yet, they were accepted by the association and filed. Clearly, this does not show an effort by the association to enforce the voting certificate requirement.

25. Rule 61B-23.0028(3)(b)6., Fla. Admin. Code, states: "The failure of the association to enforce a voting certificate requirement in past association elections and unit owner votes shall preclude the association from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement." Based on the clear terms of the rule, an association cannot, in a recall, reject a ballot for lack of a voting certificate if that is the first time a ballot or vote has been rejected for that reason. *Carmel Townhomes Condo. Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 04-02-3962, Summary Final Order (June 18, 2004); 2004 WL 3273115 (Fla. DBPR Arb.)("Where an association has failed to enforce a voting certificate requirement in past elections, the requirement will not be enforced in a recall arbitration.")

26. However, even if the rule could be interpreted as allowing an association that had not recently held an election or had a unit owner vote to establish by some

[5] Since the first certificate was signed in 2005 and the second in 2007, the unit was probably sold by the Nasimos to Ingrid Polanco. But, why still have the first certificate in the records as a voting certificate for that unit?

other means that it had scrupulously complied with the voting certificate requirement, in this case the association has not presented sufficient evidence establishing that it has done so. *See Celebrity Point Condo. Ass'n, Inc., v. Unit Owners Voting for Recall* , Arb. Case No. 2003-08-0616, Summary Final Order (November 5, 2003)(Certificates on file and notices sent to unit owners informing them of the necessity to execute a voting certificate for an upcoming election do not "establish that the association has actively enforced voting certificate requirements in the past).

27. In *Caribbean Gardens Condo. Ass'n, Inc., v. Unit Owners Voting for Recall*, Arb. Case No. 2007-05-3419, Summary Final Order (October 24, 2007), the arbitrator stated:

> Voting Certificate requirements are allowable devices to avoid confusion from possible conflicting votes from a single unit. They will not be rigidly enforced to interfere with the statutory right to vote of recognized owners of condominium units, unless the association demonstrates good cause to do so. When an association has not consistently enforced provisions requiring voting certificates, failure to comply with technical requirements of such provisions will not be accepted as grounds to reject votes of unit owners of the condominium. (citations omitted)

28. Based on the foregoing, the association's rejection of nine ballots because a voting certificate was not on file for the unit was in violation of rule 61B-23.0028(3)(b)6., Fla. Admin. Code, and is not approved.

C. WERE EIGHT (8) BALLOTS PROPERLY REJECTED BECAUSE THE SIGNATURES WERE NOT THE SIGNATURES OF THE UNIT OWNER.

29. The board rejected eight ballots because the signature was not that of the unit owner. The ballots for units 110, 122, 425, 520, 802, 804, 810, and 912 were all rejected for containing a signature of someone other than the unit owner. Mr. Frank Norwich, who was accepted as a handwriting expert, testified that none of the

signatures on those ballots were made by the same person who signed his or her name on the unit's mortgage or other document containing the unit owner's signature.

30. At the hearing, four of the unit owners who Mr. Norwich claimed had not signed the recall ballot testified that he or she had indeed signed the ballot. The unit owners testifying were Cristobal Roman, Unit 110; Leonardo Valintin, Unit 804; Berta Gonzalez Romeo, Unit 810; and Cielo Rey, unit 912. Cristobel Roman testified that all the signatures on exhibit A(1), which contained enlarged copies of the exemplar signatures and the signature from the ballot, were his signature. Although his exemplar signatures and his ballot signature look nothing alike, it is noted that the signature on his driver's license, which was not one of the exemplars but admitted into evidence, looks very much like the signature on the ballot.

31. Because a person who discovers that his signature has been forged is usually not too happy about it, he normally would not risk perjury charges to testify that the forged signature was his own. Therefore, the four unit owners who testified that the signatures on their ballots were their own are found to be credible.

32. The only remaining question is whether the signatures on the ballots for units 122, 425, 520, and 802 should be considered valid signatures.

33. At the hearing, the handwriting expert testified that the signatures of Kayla Williams, Unit 122; Adriana Johnson, Unit 425; Dana T. De La Tejera, Unit 520; and Harold Munoz, Unit 802, were not made by the same person who signed the exemplars provided to him by the association. On the other hand, the respondent presented the testimony of Orlando Buergo, who testified that he personally witnessed the unit owners signing the ballots and that all of the ballots were signed by the individual unit owner.

34. In *In re Estate of Krugle*, 134 So. 2d 860 (Fla. 2d DCA 1961), the question before the court was whether a will admitted to probate was a forged instrument. A handwriting expert had testified that the signature on the will was forged, and, on the basis of that expert testimony, the lower court found that the will had been forged. The appellate court reversed, stating that the testimony of the handwriting expert, "standing alone, was not legally sufficient to overcome the testimony of the eyewitnesses." The court cited to 154 A.L.R. 652, as follows:

> '(T)he testimony of handwriting experts, standing alone and not corroborated by facts and circumstances outside the expert's province, will not be permitted to overcome the testimony of attesting witnesses, whose testimony is unimpeached and, apart from the testimony of the expert, uncontradicted'

The court also cited to *Jones v. Jones*, 94 N.E. 2d 315, as follows:

> ***The ***point to be kept in the foreground is that the testimony of experts is, at the best, secondary evidence, merely an opinion as opposed to a positive fact, and however expert the witness may be, he is not giving voice to any direct statement ***capable of proof, but only the opinion of what he thinks the alleged differences in the signatures disclose. ...
>
> [I]t is also said that opinions as to the authenticity of handwriting at best are weak and unsatisfactory evidence, since there is much room for error, and great temptations to form opinions favorable to the party calling the witness.***
>
> ***(T)he testimony of the experts is nothing but an opinion, which may be useful when it can be corroborated by definite facts, or when it is connected with facts which may be substantiated, but it cannot be allowed to prevail over the uncontradicted and unimpeached testimony of two disinterested witnesses, who said they saw the testatrix write the signature in question.
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> ....
>
> It is not the policy of the law to permit facts positively established by eye witnesses to be overcome by opinions, except possibly when the eyewitnesses have been discredited or impeached. To do so would put a premium upon secondary evidence.

35. In *Dozier v. Smith*, 446 So. 2d 1107, 1109 (Fla. 2d DCA 1984), the court, citing to the *Krugle* case, stated that "a handwriting expert's testimony that a document was a forgery, standing alone, and without corroboration by circumstances indicative of forgery or fabrication, was legally insufficient to overcome the testimony of unimpeached eyewitnesses." *See also Mauldin v. Reel*, 56 So. 2d 919 (Fla. 1951)(While the testimony of a handwriting expert ought not to prevail over direct and credible evidence to the contrary, when direct evidence is not credible, testimony of two handwriting experts is sufficient to establish a forgery).

36. In *Raulerson v. Metzger*, 375 So. 2d 576, 577 (Fla. 5th DCA 1979) the trial court accepted the testimony of the handwriting expert over the testimony of two witnesses who testified they had observed the deceased sign the will. The expert's testimony was corroborated by other evidence, specifically the deceased's physical condition. The appellate court affirmed the trial court, but observed that "the testimony of a handwriting expert as to the authenticity of a signature standing alone is not legally sufficient to overcome the testimony of eyewitnesses to the signing of a document concerning the validity of the signature on that document." (e.s.)

37. In this case, there was no evidence presented that corroborated the testimony of the handwriting expert. His opinion was the only evidence presented to suggest that the signatures on the questioned ballots were not those of the unit owners. The association failed to present the testimony of even one of the eight unit owners whose signatures were claimed to be forged. The respondent presented the testimony of four of the unit owners, and they testified unequivocally that they had signed the ballots. Further, Mr. Buergo testified that he observed the unit owners sign their

ballots. *See In re Estate of Lunga*, 271 So. 2d 805 (Fla. 3d DCA 1973)(testimony of eyewitness to execution of will is more convincing than testimony of two handwriting experts).

38. There is no doubt that Mr. Buergo is an interested witness. He testified that he went from door to door getting unit owners to fill-out and sign ballots to recall the board members named. However, that does not require that his testimony be ignored. In *Laragione v. Hagan*, 195 So. 2d 246 (Fla. 2d DCA 1967), the court noted that interested witnesses were authorized to testify under the evidence code, and stated that "'[i]nterest' in the sense that the witness may desire the success of the party calling him, may, however, be taken into consideration in determining the credibility of his testimony." As to the testimony of the "interested" witness in that case, the court noted that his testimony

> was not contradicted by any other witness, and it was not contradicted within itself. Neither was it essentially illegal, contrary to natural laws, inherently improbable or unreasonable, opposed to common knowledge, or inconsistent with other circumstances in evidence. It was material, properly admitted, and consisted of facts, not opinions. It would be error to wholly disregard or reject it even though he had been an interested party.

39. In *Leighton v. Harmon*, 111 So. 2d. 697 (Fla 2d DCA 1959), the court addressed whether an interested party, such as an heir, could testify as to facts and circumstances arising during the decedent's lifetime to negate the presumption of the revocation of a will that had cancelled written across it. The court, quoting from *Hays v. Ernst*, 32 Fla. 18, 13 So. 451 (Fla. 1893), stated:

> On a contest of will, the subject-matter of investigation is the act of the testator in *executing* the will, and the proceeding is directed to this matter. The execution of a will is not a transaction or communication between the

> testator and a legatee, and the heirs at law, next of kin, and devisees are competent witnesses *as to the factum of the execution of the will.*

The court thus concluded that "[t]he authenticity of the instrument executed by the testator as his last will may be proved by anyone who has knowledge of the *facts.*" *See also Mondy v. Sanchez*, 972 So. 2d 1032 (Fla. 3d DCA 2008)(A interested witness may testify as to facts concerning the signing of a real estate contract).

40. Therefore, because the association failed to present any evidence corroborating the testimony of the handwriting expert; because the handwriting expert had only two or three exemplars provided to him and no original documents; because Mr. Buergo testified that he observed the unit owners in question execute the ballots; because Mr. Buergo's testimony was the only direct testimony concerning the execution of the four ballots in question; because Mr. Buergo is competent to testify as to the execution of the ballots despite his interest in the outcome; and because four of the other unit owners whose signatures were declared a forgery by the handwriting expert came to the hearing and testified that they had signed the ballot for their unit, it is found that the association failed to carry its burden of establishing that the signatures on the ballots for units 122, 425, 520, and 802 were a forgery.

CONCLUSION

41. Based on the forgoing, the recall of Myriam Lopez and Carlos Carty must be certified. However, it is noted that in its proposed final order, respondent states, "Miriam Serrano and Emilia Lopez shall take office as replacement directors." The parties agreed that the recall of Richard Guadalupe was moot, since he resigned

well before the recall agreement was served on the board.[6] Only two board members of the five board members are being recalled. Therefore, the majority of the board is not being recalled.

42. Section 718.112(2)(j)5., Fla. Stat., provides that if less than the majority of the board is recalled, the vacancies resulting from the recall "may be filled by the affirmative vote of the majority of the remaining directors." Rule 61B-23.0028(1)(c), Fla. Admin. Code, provides that replacement candidates will be listed on the ballot "in those cases where a majority or more of the board is sought to be recalled. Candidates for replacement members shall not be listed when a minority of the board is sought to be recalled, as the remaining board may appoint replacements."

43. When this recall was instituted, the recall was an attempt to recall the majority of the board, i.e., three out of five members. When one of the members targeted for recall resigned, the recall no longer was for the majority of the board, and the list of replacement candidates became superfluous.

Based on the foregoing, it is

ORDERED:

(1) The recall of Myriam Lopez and Carlos Carty is hereby **CERTIFIED**. **The recall is effective immediately**. Myriam Lopez and Carlos Carty shall, within five (5) days of the date of this order, deliver to the remaining board members any and all association records in their possession.

(2) The remaining board members **shall meet as soon as possible to appoint**

[6] There was no suggestion that the resignation was related to the recall attempt, and the respondent agreed that the recall, as to that seat, was moot.

two unit owners to take the place of Myriam Lopez and Carlos Carty on the board. The five unit owners listed as possible replacement candidates on the recall ballot have already expressed their willingness to serve. Of course, the board members are not limited to appointing two of the unit owners listed on the ballot as replacement board members, as long as there are other unit owners willing to serve. The recalled board members, Myriam Lopez and Carlos Carty, may not be appointed to the board.

DONE AND ORDERED this 4th day of September, 2008, Tallahassee, Leon County, Florida.

Diane A. Grubbs, Arbitrator
Dep't 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 and facsimile copy to the following persons on this 4th day of September, 2008.

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