

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

**IN RE: PETITION FOR RECALL ARBITRATION**

Filed with  
Arbitration Section

**HERON AT THE HAMMOCKS  
CONDOMINIUM ASSOCIATION, INC.,**

JUL 30 2014

**Petitioner,**

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

**v.**

**Case No. 2014-03-1415**

**UNIT OWNERS VOTING FOR RECALL,**

**Respondent.**

\_\_\_\_\_ /

**ORDER REQUIRING FILING**

On July 25, 2015, Heron at the Hammocks Condominium Association, Inc. (the Association) filed a petition for recall arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes. Among the reasons the Association did not certify the recall were: five (5) written recall agreements were signed without having a voting certificate on file with the Association; ten (10) written recall agreements had signatures that did not match exemplars; and thirty-five (35) written recall agreements were signed by unit owners whose voting rights had been suspended.

**Voting Certificates**

Because the Association seeks to enforce its voting certificate requirement pursuant to the governing documents, the Association shall produce evidence from its official voting records demonstrating that specific votes were rejected on this basis at the most recently concluded elections or unit owner votes in the immediately preceding three years. The Association shall produce and file all of the following if available: the

official minutes of the election showing the rejection of specific ballots for lack of a voting certificate, tally sheets, and discarded ballots indicating on their face rejection for lack of a voting certificate. Such evidence is necessary because the case law establishes that if an association fails to enforce a voting certificate requirement in past association elections or votes, it is precluded from rejecting a written recall ballot or agreement for failing to comply with a voting certificate requirement. See *The Caribbean Condo. Mgmt. Assn., Inc. v. Kennedy*, Arb. Case No. 93-0175, Final Order (October 27, 1993) (Association, by not enforcing provision of declaration in regard to voting certificates, has established a pattern of allowing irregularities in the certificates; therefore, provision will not be enforced in recall arbitration).

#### **Signatures That Do Not Match Exemplars**

The allegation that a signature does not match exemplars will not be found to create a disputed issue of material fact without supporting affidavits from the unit owner whose signature is in dispute or expert testimony from a qualified document examiner who has had the opportunity to inspect known original signatures. See *Monaco Garden Condominium Apartments, Inc., v. Unit Owners Voting for Recall*, Arb. Case No. 2010-01-9408, Summary Final Order (May 12, 2010). The Association shall be required file such proof.

#### **Voting Right Suspensions**

The Association did not attach any documentation that these owners' voting rights had been properly suspended pursuant Section 718.303(5),(6), Florida Statutes which provides:

- (5) An association may suspend the voting rights of a unit or member due to nonpayment of any monetary obligation

due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association may not be counted towards the total number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

In order for the Association to properly reject a unit owner's ballot the Association must show both that the unit owner's voting rights had been properly suspended and proper notice has been given to the unit owner before the date of service of the recall. *Park Lake Village Condominium Association, Inc. v. Unit Owners Voting For Recall*, Arb. Case No. 2010-05-7395, Summary Final Order (January 11, 2011). Petitioner shall file a copy of the minutes of the meeting(s) that suspended the 35 unit owner's voting rights and proof of notice to that unit owner before the date of service of the recall.<sup>1</sup>

---

<sup>1</sup> As stated in *One Farrell Park Condo, Ass'n, Inc. v. Unit Owners Voting Recall*, Arb. Case No. 2013-02-6252, Summary Final Order (October 22, 2013):

If an owner was more than 90 days delinquent in the payment of his monetary obligations to an association, it was not until July 1, 2010, that the legislature gave an association the authority to suspend the delinquent owner's "use rights" and his "voting rights". See Laws, c. 2010-174 § 16, eff. July 1, 2010. [footnote omitted]

Prior to July 1, 2010, arbitration case law held that the Condominium Act, Chapter 718, et. seq., Florida Statutes, having derived entirely from statutory roots, outlines exclusively what authority associations can exercise over their membership. Suspensions of use and voting rights were two such actions an association could not take until section 718.303(3)

Therefore, it is **ORDERED**:

No later than **5:00 p.m. on August 22, 2014**, Petitioner shall file a reply which includes the documents identified herein. **If Petitioner fails to timely comply with this order, the arbitrator shall enter a summary final order without further notice.**

DONE AND ORDERED this 30th day of July, 2014, at Tallahassee, Leon County, Florida.



Terri Leigh Jones, Arbitrator  
Department of Business and  
Professional Regulation  
Arbitration Section  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029  
Telephone (850) 414-6867  
Facsimile (850) 487-0870

---

was amended as described below [footnote omitted]. See, *Ludwig v Tudor Cay Condominium Association, Inc.*, Arb. Case No. 2003-06-5896, Final Order on Motion for Rehearing (February 17, 2004)(the statute (Chapter 718) does not provide that the association may disenfranchise an owner for failure to pay a fine or assessment.); *Lincolnwood Towers Condominium Association, Inc., v Unit Owners Voting for Recall*, Arb. Case No. 99-2047, Summary Final Order (November 18, 1999) (condominiums are creatures of statute and are thus only permitted to exercise those powers provided by statute). Nowhere does the statute permit an association to deny an owner the right to vote or to hold office due to an alleged arrearage in the payment of assessments. *Alan v. Boca, Cove Home Condominium Association, Inc.*, Arb. Case No. 92-0263, Order Enlarging Previous Order dismissing Counterclaim for Libel, Slander and Conspiracy to Libel for Lack of Jurisdiction (March 1, 1993) The validity of that portion of the Declaration, which purports to permit the board to suspend the voting rights and use of the common elements for violations of board rules, is suspect; the Act specifies those remedies available to an association seeking to enforce its rules and regulations; other remedies not specified are not authorized by the Legislature, particularly where, as here, the association seeks to impair fundamental rights.) If the Association's authority is limited to that which existed in the Condominium Act as of 1989, the Association would still not have the authority to suspend any members' voting rights for any reason.

Copy furnished by U.S. Mail to:

Russell M. Robbins, Esq.  
Mirza Basulto & Robbins, LLP  
9690 West Sample Road  
Suite 103  
Coral Springs, FL 33065-4046  
Attorney for Petitioner

Rajendra Prakash  
14395 SW 139<sup>th</sup> Court  
Suite 103  
Miami, FL 33186-5583