

1/24/07
JE

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

IN RE: PETITION FOR ARBITRATION

Alameda Tower 2 Condominium
Association, Inc.,

Petitioner,

v.

Case No. 2006-05-7030

Unit Owners Voting For Recall,

Respondent.

_____ /

SUMMARY FINAL ORDER

Procedural History

On October 16, 2006, Alameda Tower 2 Condominium Association, Inc. (the Association) filed a recall arbitration petition. On November 30, 2006, the Respondent filed a response to the petition. On January 17, 2007, a case management conference was held during which it became apparent that there are not material issues of fact in dispute and, therefore, the undersigned indicated his intent to summarily rule upon this matter.

Findings of Fact

1. Alameda Tower 2 Condominium Association, Inc. is the legal entity responsible for the operation of the Alameda Tower 2 Condominium.
2. On October 4, 2006, the Association received a package (the package), which contained an unsigned written recall agreement ballot along with a letter written in Spanish regarding assessments which was signed by twenty-seven persons. The letter

further indicated that meeting was to have been held on September 18, 2006. No such meeting ever occurred.

3. On November 27, 2006, in response to the petition, the Respondent filed copies of executed written recall agreement ballots. Some of the ballots were dated subsequent to the date the Association received the above described package and on the same date the petition was received by the Department.

Conclusions of Law

1. The undersigned has jurisdiction over the parties and subject matter of this dispute, pursuant to sections 718.112(2)(j)3. and 718.1255, Florida Statutes. In accordance with section 718.112(2)(j)3., Florida Statutes, the unit owners voting in favor of the recall are the Respondent in this matter.

2. In order for a recall by written agreement to be valid it must substantially comply with the requirements Rule 61B-23.0028(1), Fla. Admin. Code. Except for the unsigned ballot¹ included with the package delivered to the Association on October 4, 2006, the package fails to comply with almost all of the requirements of the rule. Therefore, the package fails if it is considered a recall by written agreement.

3. Likewise, the package fails if it is considered an attempt to recall the directors by unit owner meeting, as it fails to substantially comply with most of the requirements of Rule 61B-23.0027, Fla. Admin. Code. Moreover, no unit owner recall meeting ever occurred.

4. The undersigned does note that the unit owners presently appear to be attempting a recall by written agreement based upon the executed written recall

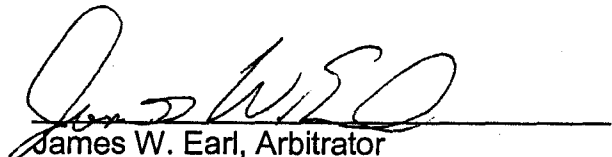
¹ The unsigned ballot included with the package is identical to the Department's form ballot. However, due to the lack of a signature, it is of no effect.

agreement ballots filed by the Respondent. However, it is clear that this agreement was not completed until October 16, 2006, the most recent date on any of the ballots, the same date the petition in this dispute was filed. Therefore, it cannot be considered a part of the recall effort in the instant matter and will not be addressed by this case.

Based upon the foregoing, it is ORDERED:

The Association's decision not certify the written recall served on it on October 4, 2006, is affirmed.

DONE AND ORDERED this 24th day of January 2007, at Tallahassee, Leon County, Florida.



James W. Earl, Arbitrator
Department 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 final order has been sent by U.S. Mail to the following persons on this 24th day of January 2007:

Yudany Fernandez, Esq.
Alfaro & Fernandez, P.A.
13965 NW 67th Avenue
Miami Lakes, Florida 33014
Attorney for the Petitioner

Nelly Casanova
5350 West 21 Court, Apt. 106
Hialeah, Florida 33016
Unit Owner Representative



James W. Earl, Arbitrator