

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

IN RE: PETITION FOR ARBITRATION

**CAPE WINDS CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2006-00-9585

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

FINAL ORDER DISMISSING PETITION AS MOOT

On February 17, 2005, the petition for recall arbitration was filed. On February 24, 2006, an order was entered allowing the respondent to file an answer. Because there was no unit owner representative named for the respondent, the order entered on February 24, 2006, required the association to post the Order Allowing Respondent to Answer Petition on the condominium grounds where notices are normally posted. The answer to the petition had to be filed within ten (10) days of the posting of the order and petition. The order also noted that an election was scheduled for March 7, 2006, and if the election were held as scheduled, this matter would become moot.

On February 27, 2006, the association filed its notice of posting, stating that the order had been posted on February 27, 2006. Based on the notice, the answer from the respondent, if any, should have been filed on or before March 9, 2006. No answer was filed by the respondent and a unit owner representative never made an appearance.

On March 10, 2006, the association filed a Motion to Determine the Matter

Moot. In the motion, the association alleged that on March 7, 2006, the association held its annual meeting. Lonnie Robinson, Fredrick Frey and Dana Thompson, the three board members whose recall was sought by the recall agreement, were all re-elected to the Board of Directors.

Because the annual election has been held and the board members whose recall was sought were re-elected, the question of the validity of the recall agreement is now moot. See, e.g., *Board of Directors of Greentree Condominium Association, Inc., v. Unit Owners Signing Written Agreement*, Arb. Case No. 97-2461, Order Granting Suggestion of Mootness and Dismissing Recall (February 17, 1998)(the petition for recall arbitration was moot after the directors sought to be recalled were re-elected without an election pursuant to section 718.112(1)(d)3., Fla. Stat.); *Greentree Condominium Association, Inc. v. Unit Owners Seeking Recall*, Arb. Case No. 98-5427, Final Order Dismissing Petition for Arbitration (March 4, 1999)(recall petition was moot where an election for all positions on the board was held while the petition for arbitration was pending, even though the unit owners disputed the manner in which the intervening election was held); *Hacienda Del Sol Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 01-3566, Final Order (September 14, 2001)(an intervening election in which all board members subject to recall are re-elected makes the recall attempt moot); *Riviera Villas Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2003-04-5722, Final Order Dismissing Petition for Recall Arbitration (April 22, 2003)(petition for recall arbitration dismissed as moot due to an intervening election; any irregularities in the election could not be challenged in the recall arbitration case).

Based on the foregoing, it is

ORDERED:

The Motion to Determine the Matter Moot is GRANTED, and the above-styled case is hereby DISMISSED as moot. Because the unit owner representative never made an appearance in this case, this order shall be posted in the same location as the previous order for a period of seven (7) days.

DONE AND ORDERED this 15th day of March, 2006, in Tallahassee, Leon County, Florida.

Diane A. Grubbs, Arbitrator
Dep't of Business & Professional Regulation
Arbitration Section
Northwood Centre
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 15th day of March, 2006:

Marlene L. Kirkland, Esquire
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Attorney for the petitioner

Diane A. Grubbs, Arbitrator