

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

**IN RE: PETITION FOR ARBITRATION**

**Daytona Beach Club Condominium  
Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2006-03-0665**

**Unit Owners Voting For Recall,**

**Respondent.**

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**SUMMARY FINAL ORDER**

On May 31, 2006, Daytona Beach Club Condominium Association, Inc. (the association) filed a petition for recall arbitration. The unit owners who voted in favor the recall are the respondent in this matter.

The petition indicates that the association received a written recall agreement on May 19, 2006, seeking to recall Evangelos Stathopoulos, Diddie "Pat" James, and Frank Figlia, three of the five members of the association's board of directors. The petitioner further indicate that on May 25, 2006, the board held a meeting at which time it determined not to certify the recall. The minutes of meeting attached to the petition indicates that the board rejected individual ballots for various reasons including fraud, forgery, lack of separate ballots for each director, lack of replacement candidates, lack of separate ballots for each unit, misspelled director's names, ballot was not signed by the unit owner, and the ballot either was not dated or was dated subsequent to the date of the "notice of written recall agreement."

On June 27, 2006, the respondent filed its answer to the petition. The respondent denies that any of the ballots were forged. The respondent asserts various

defenses including that the recall effort substantially complies with the recall rules, that the board did not individually consider each ballot, and that the board meeting at which the recall was considered was not properly noticed. The respondent's defenses need not be addressed as the recall is fatally flawed on its face as discussed below.

On June 13, 2006, with the consent of counsel for the association, the undersigned contacted the unit owner representative, Theresa Covucci, in order to confirm that the ballots attached to the recall petition were the ballots served on the board. Ms. Covucci confirmed that the attached ballots were accurate. The undersigned noted that the vast majority of the ballots were either unsigned copies of emails or unsigned type written letters. Ms. Covucci indicated that she was under the impression that votes could be cast by email or by verbal consent. Apparently, the unsigned type written letters are Ms. Covucci's method of indicating that the unit owners had verbally indicated their vote to her.

Recall ballots which lack signatures are fatally flawed and must be rejected.<sup>1</sup> In *Gatsby Condo. Ass'n, Inc. v. Unit Owners Voting for Recall*, Case Nos. 2005-03-4272 and 2004-03-3311, Summary Final Order (August 19, 2004), the arbitrator rejected a recall ballot cast via email because such messages lack the assurances of authenticity of signed ballots since persons familiar with computers can manipulate emails in order to send messages that falsely appear to be sent by a particular person. The undersigned hereby follows the holding in *Gatsby*.

The arbitrator in *Gatsby* further noted that if the association's controlling documents provided a procedure for casting votes by email or if the association had

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<sup>1</sup> Where a person has been granted authority to cast a vote on behalf of another, the ballot must be signed by the agent in the agent's own name and should indicate the signatories authority to cast the vote. Proof must be provided that the agent has been properly delegated such authority. Verbal authorization is not a legally sufficient method to delegate recall voting authority. Such authority may be granted through a properly executed voting certificate where the association's documents permit the use of voting certificates or by a properly executed power of attorney.

accepted votes via email in the past the association would be prohibited from rejecting such votes in order to defeat a recall. Neither of these scenarios have been established in the instant case.

The association contains 117 voting interests. Therefore, 59 votes are necessary to recall a board member. The written recall agreement consists of 72 ballots. Six ballots are unsigned, type-written letters and forty-three of the ballots consist of copies of unsigned emails. For the reasons stated above, these ballots are defective and, therefore, are rejected<sup>2</sup>. When these ballots are subtracted from the total number of ballots submitted to the association, the recall effort clearly lacks the number of votes necessary to recall any of the board members.

Based upon the foregoing, it is ORDERED:

The association's decision not to certify the recall is affirmed.

DONE AND ORDERED this 17<sup>th</sup> day of July 2006, at Tallahassee, Leon County, Florida.

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James W. Earl, Arbitrator  
Department of Business and  
Professional Regulation  
Arbitration Section  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

### **CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing summary final order was mailed by U.S. mail this 17<sup>th</sup> day of July 2006 to:

Jerome Mitchell, Esq.  
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<sup>2</sup> The respondent might benefit from a review of the article *Recall Procedure from A to Z: A Beginner's Guide to Recall Procedures* located at [www.myflorida.com/dbpr/lsc/arbitration/general\\_information/recallprocedure.htm](http://www.myflorida.com/dbpr/lsc/arbitration/general_information/recallprocedure.htm).

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Unit owner representative

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James W. Earl