

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

**IN RE: PETITION FOR ARBITRATION**

**Keystone Harbor Club  
Condominium Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2006-00-7066**

**Unit Owners Voting For Recall,**

**Respondent.**

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**SUMMARY FINAL ORDER**

On February 7, 2006, Keystone Harbor Club Condominium Association, Inc. (the association) filed a petition for recall arbitration. The petition indicates that on January 25, 2006, the association received a written recall agreement seeking the recall of four of the five members of its board of directors as follows: Adrian Parker, Tom Dereda, John Kattleman, and Susan Sparks. The recall agreement names as replacement candidates: James Anthony, Jerry Pagaulatos, Ivan Barrosa, and Mark Mason.

On January 23, 2006, the seats held by John Kattleman and Susan Sparks were open for election and they were voted out of office. James Anthony and Jerry Pagaulatos were elected to the open seats.

On March 24, 2006, James Anthony, the new president of the association, filed a notice of withdrawal of the of the association's petition for recall arbitration. Attached to the notice was a copy of the minutes from the association's board of directors meeting held on January 23, 2006, during which the board determined not to proceed forward

with the recall arbitration proceeding. In effect, the board voted to withdraw the board's challenge to the recall effort.<sup>1</sup>

On March 27, 2006, counsel for the association filed a motion to withdraw as counsel due to irreconcilable differences with the new board. The undersigned finds it appropriate to permit counsel and his law office to withdraw as counsel for the association.

In 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 arbitrator held that 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. In Greentree Condominium Association, Inc. v. Unit Owners Seeking Recall, Arb. Case No. 98-5427, Final Order Dismissing Petition for Arbitration (March 4, 1999), the arbitrator held that the 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. In Hacienda Del Sol Condominium Association, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 01-3566, Final Order (September 14, 2001), the arbitrator held that an intervening election in which all board members subject to recall are re-elected makes the recall attempt moot, noting that if the owners wished to contest the validity of the intervening election, their recourse is to file a petition for arbitration pursuant to section 718.1255(1)(b)1., Florida Statutes. In 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,

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<sup>1</sup> The board also voted to "certify" the recall. However, the previous board had already taken action on the recall agreement choosing not to certify it; therefore, the board no longer had jurisdiction to act on the recall agreement.

2003), the arbitrator dismissed the petition for recall arbitration as moot due to an intervening election despite the unit owners argument that there were irregularities in the intervening election, noting that unit owners wishing to contest the validity of the intervening election could file a petition pursuant to section 718.1255(1)(b)1., Florida Statutes. Therefore, the March 23, 2006, election has rendered the recall dispute moot as to directors Kattleman and Sparks.

Rule 61B-50.112, Florida Administrative Code, permits the association to withdraw its recall petition as follows:

(1) A petition for arbitration of a recall may be withdrawn at any time prior to the commencement of the scheduled final hearing. Such withdrawal shall be in writing and directed to the arbitrator. Withdrawal may be made by telephone, but must be subsequently confirmed in writing, or by an order certifying the recall entered by the arbitrator if the petitioner fails to file written notice.

(2) Withdrawal of a petition for arbitration of a recall shall be with prejudice. If the board withdraws the petition, the recall shall be deemed certified and the board members recalled. The board member or members recalled shall turn over all association records in his or their possession within five full business days after the withdrawal is filed (i.e., received by the division).

Thus, due to the association's withdrawal of its recall petition, the recall is deemed certified as to board members Adrian Parker and Tom Dereda. The remaining board members will be permitted to appoint replacement board members in accordance

Based upon the foregoing, it is ORDERED:

1. The election held on March 23, 2006, has rendered the recall dispute moot as to directors Kattleman and Sparks.

2. The recall of Adrian Parker and Tom Dereda is hereby CERTIFIED and they are REMOVED as directors, effective as of the date of the mailing of this order. Within five (5) full business days from the effective date of this recall Adrian Parker and

Tom Dereda shall deliver to the board any and all association records in their possession.

3. The remaining board members may appoint replacement board members.

4. Counsel's motion to withdraw as counsel for the association is granted. All future pleadings shall be served on the association's representative as indicated below.

DONE AND ORDERED this 3<sup>rd</sup> day of April, 2006, at Tallahassee, Leon County, Florida.

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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 summary final order has been sent by U.S. Mail to the following persons on this 3<sup>rd</sup> day of April 2006:

Keystone Harbor Club Condominium  
Association, Inc.  
c/o James Anthony, President  
13155 Ixora Court  
North Miami, Florida 33181

Jerry Pagaulatos  
13155 Ixora Court  
Unit 305  
North Miami, Florida 33181  
Unit Owner Representative

Brian W. Pariser, Esq.  
Brian W. Pariser, P.A.  
9130 South Dadeland Boulevard  
Suite 1511  
Miami, Florida 33156

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James W. Earl, Arbitrator