

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

IN RE: PETITION FOR ARBITRATION

**NATALIE SUITES CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2007-02-8234

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

SUMMARY FINAL ORDER

Statement of Issue

The issue presented for determination by the arbitrator is whether the written recall agreement served on the Association's board of directors on April 19, 2007, should have been certified.

Findings of Fact

1. On April 27, 2007, the Association filed a recall arbitration petition.
2. There are 89 voting interests in the association. Therefore, a minimum of 45 votes are necessary to recall a member of the Association's board directors.
3. The total number of seats on the board is 5.
4. On April 19, 2007, the Association was served with a written recall agreement consisting 47 ballots voting in favor of the recall of the following members of the board of directors: Bayardo Lacayo, Pedro Ravelo, Angel Montero, and Marina

Gonzalez. Replacement Board members listed were: Carlos Llopiz, Jose M. Torralbas, and Rosa M. Fiorenzano.

5. The Association held a meeting to consider the recall on April 23, 2007. The only item on the agenda was the recall. The Board voted to reject the recall petition for the following reasons:

a. Unit 101 voted twice by the husband and wife, Angel Amaya and Noemi Alvarez, in violation of the by-laws.

b. Unit D-101 signed by Marie Wilson was invalid as she is not the unit owner.

c. The recall agreements list Jose M. Torralba as a replacement director and Mr. Torralba is ineligible to serve as he is not a unit owner. Rejection of Mr. Torralba results in only two replacement directors. All of the recall ballots are invalid as Article VIII of the Declaration of Condominium requires a minimum of three directors and, with the exclusion of Mr. Torralba, only two directors would be elected to the board.

6. Article II. 2.1., of the By-Laws of the Condominium, provide “[t]he members of the Association shall consist of all of the record owners of units in the condominium.”

7. Article VII, 2., of the By-Laws of the Condominium, provide, “[e]ach unit in the condominium has one vote. The record owner of more than one unit is entitled to one for each unit.”

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. A Summary Final Order is appropriate in this case pursuant to Rule 61B-50.119, Florida Administrative Code.

3. According to the minutes of the Board meeting held on April 23, 2007, the Board rejected the recall agreement for the following reasons: identical ballots from unit A-101 were both rejected, as both the husband and wife voted; the ballot from unit D-101 signed by Marie Wilson was rejected, as Ms. Miller is not the owner of record; and all of the remaining ballots were rejected, as one of the three replacement directors is not a unit owner and was not eligible to serve on the board leaving a total of two replacement directors and three vacant positions.

4. Article II, section 2.3, of the By-Laws provides, in part, that “the owner of each unit shall be entitled to one vote.” Two ballots were submitted by the husband and wife unit owners of Unit A-101 . Each ballot indicated identical votes. Where there are two ballots cast on behalf of one unit, one by each owner, each ballot has identical votes, the additional ballot is disregarded but does not invalidate the one ballot cast for that unit. *See Alexandra Village Condo. Assoc., Inc. v. Unit Owners Voting for Recall*, Arb Case Nos. 00-1851 and 00-1720, Final Order (December 5, 2000)(Where multiple ballots cast on behalf of one unit all have identical votes, the duplicates are disregarded but the duplication does not invalidate all votes cast by that unit). The single duplicate ballot cast for this unit does not invalidate the one ballot for recall cast on behalf of this unit. **Therefore, one of the two ballots cast for this unit was improperly rejected.**

5. It is unrefuted by the Respondent that Marie Wilson was not a unit owner and not entitled to cast a ballot. **Therefore, the ballot cast for this unit was properly rejected.**

6. Article IV, Section 4.2, of the By-Laws, provides, in part, that [a]ny member of the Board of Directors must be an owner of a unit in the condominium unless designated by the Developer either as a member of the initial Board of Directors or otherwise.” Petitioner alleges that Jose Torralba, listed as a replacement candidate for the board is not a unit owner and member of the association. Respondent submitted, as proof of unit ownership, pages 1 and 2 of a mortgage document. Evidence of ownership of a non-corporately or trust owned unit is established by a properly recorded deed. In this case, Respondent’s mortgage does not establish Mr. Torralba’s ownership of the unit and eligibility to serve on the board. *See Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-04-6650, Summary Final Order (January 13, 2005)(Submission of mortgage documentation is insufficient evidence of unit ownership). Therefore, Mr. Torralba is properly rejected as a replacement candidate for the board.

7. Petitioner alleges that Mr. Torralba’s ineligibility to serve on the board results in there being only two eligible board replacement members and that the governing documents require three members on the board at all times invalidates the recall. However, the fact that one of the three identified board member replacements is ineligible to serve on the board is an inadequate reason to reject the entire recall. The recall of directors and the election of their replacements are two separate questions. *Three Lakes Village Condo. Assn., Inc. v. Unit Owners Voting for Recall*, Arb. Case No.

2004-01-1930, Summary Final Order (April 7, 2007)(The recall of board members and the election of replacements for recalled directors are generally two separate questions; thus, an association cannot reject recall ballots based on replacement candidate issues.

8. Rule 61B-23.0028(1)(c), Florida Administrative Code, requires the ballot to list, “at least as many eligible persons who are willing to be candidates for replacement board members as there are board members subject to recall...” In the case at hand, the recall ballots provide for the recall of the entire board and failed to identify sufficient eligible members of the board. Regardless, the rule specifically states that “[t]he failure to comply with the requirements of this subsection shall not effect the validity of the recall of a board member or members.” Upon review of the ballots submitted by the Association with its petition, the remaining 45 ballots substantially comply with the requirements of rule 61B-23.0028, Florida Administrative Code. **Therefore, the Board improperly failed to certify the recall agreement.**

Additionally, Rule 61B-23.0028(3)(a)3., Florida Administrative Code, provides:

If a majority or more of the board is recalled in a certified recall, those replacement board members elected by the written agreement pursuant to the procedure referenced in paragraph (1)(c) of this rule shall take office upon adjournment of the board meeting at which it determined to certify the recall. A board member who is elected to fill a vacancy caused by recall shall fill the vacancy for the unexpired term of the seat being filled.

Furthermore, Section 718.112(2)(j)5., Florida Statutes, provides, in part, “[i]f the vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection.”

As a result of the recall, the Board members have been **RECALLED** and an insufficient number of replacement board members have been elected. The two elected

replacement board members may find guidance in section 718.112(2)(d)8., Florida Statutes, which provides, in pertinent part, as follows:

Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy...

Based upon the foregoing, it is **ORDERED**:

1. The **recall** of board members Lacayo Ballardo, Lopez Aracely, Montero Angel, Gonzalez Marina, and Ravelo Pedro is hereby **CERTIFIED** and they are **REMOVED** as directors effective as of the date of the mailing of this order. Within five full business days from the effective date of this recall, Lacayo Ballardo, Lopez Aracely, Montero Angel, Gonzalez Marina, and Ravelo Pedro shall deliver to the board any and all records of the association in their possession to the new board of directors.

2. As the entire five member board has been recalled, pursuant to rule 61B-23.0028(7)(b), F.A.C., the replacement candidates, Carlos Llopiz and Rosa M. Fiorenzano shall take office upon the mailing of this order for the unexpired terms of the recalled directors and additional replacement board members shall be selected or elected pursuant to section 718.112(2)(d)8., Florida Statutes.

DONE AND ORDERED this 21st day of June 2007, at Tallahassee, Leon County, Florida.

Tonya S. Chavis, 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 21st day of June 2007:

Anthony Dieguez, Esq.
Anthony Dieguez, P.A.
7950 NW 155 Street
Suite 207
Miami Lakes, Florida 33016

Jose M. Torralba
2301 West 60th Street
#107
Hialeah, Florida 33012

Tonya S. Chavis, Arbitrator