

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

**IN RE: PETITION FOR ARBITRATION**

**Number 1 Condominium Association –  
Village Green, Inc.,**

**Petitioner,**

**v.**

**Case No. 2006-01-4096**

**Unit Owners Voting For Recall,**

**Respondent.**

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**SUMMARY FINAL ORDER**

This final order is entered pursuant to rule 61B-50.119(3), Florida Administrative Code, which provides that “[a]t any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief.”

**Procedural History**

On March 14, 2006, Number 1 Condominium Association – Village Green, Inc. (the association) filed a petition for recall arbitration seeking a final order upholding its decision not to certify the recall by unit owner meeting that was held on March 1, 2006, for the reasons stated in the petition. By order dated March 20, 2006, the two named unit owner representatives, Jose Ramos and Stephen Kiss, were directed to respond to the petition for arbitration and identify all facts stated in the petition which were disputed

by the respondent. The respondent was notified that if it did not dispute the facts alleged in the association's petition or the accuracy of the exhibits attached to the petition, the allegations would be accepted as true and the exhibits as being accurate. Copies of the petition for recall arbitration and the attached exhibits were served on the unit owner representatives by certified mail on March 23, 2006, and March 27, 2006, respectively. On March 28, 2006, one of the two named representatives, Stephen Kiss, filed a communication with the arbitrator in which he denied being a designated unit owner representative. No such communication was filed by Mr. Ramos. No response was filed on behalf of the unit owners voting for recall. This order is entered accordingly.

### **Discussion**

Number 1 Condominium Association – Village Green, Inc. consists of 237 voting interests, and is operated by a five-member board of directors. Three of the five board members, Carline Catalano, President, Richard Catalano, Treasurer, and Bruce Norris, Vice President, were listed as being subject to the recall. The association alleges in its petition for recall arbitration that the respondent attempted a recall by a unit owner meeting that was conducted on March 1, 2006. Attached to the petition was a signature list containing numerous signatures titled "Certification of Board Members Recall Meeting of March 1, 2006". Directly beneath this title were the names of the board members subject to the recall and the handwritten date of March 1, 2006.

The association's board held its mandatory recall meeting on March 6, 2006,<sup>1</sup> at which time it considered the attempted recall by the unit owners. The petition and the attached board meeting minutes are silent as to how the board came into possession of

the signature list containing the signatures of the various unit owners voting for recall.

The board's reasons for rejecting the recall effort are as follows:

1. The board was not served with notice of the recall meeting;
2. The board was not served with any minutes of the recall meeting, nor were there any meeting minutes reflecting that a vote at the recall meeting was taken or a count of the votes indicated on the signature sheet was made and/or published;
3. There was only a signature sheet, (referred to in the petition as a "sign in" sheet) which reflected that the signatures of various unit owners who signed it were solicited on various dates other than the actual date of the recall meeting, and the list did not meet the requirements of a proper written recall agreement.

Based on the allegations contained in the petition and the attached exhibits, it appears that the unit owners signing the "signature list" attempted to recall the listed board members by unit owner meeting, in accordance with rule 61B-23.0027, Florida Administrative Code, with the signature list having been used initially as the recall meeting notice under rule 61B-23.0027(2), Florida Administrative Code. However, there is no written record of the unit owner recall meeting establishing the respondent's compliance with rule 61B-23.0027(3)(a)-(c), Florida Administrative Code. Therefore, it must be concluded that any attempt to recall the listed board members by unit owner meeting fails for non-compliance with the above referenced administrative rule, and the board's determination not to certify the recall must be upheld.

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<sup>1</sup> This allegation of fact has not been disputed by the respondent and is accepted as true.

The association also contends in its petition that the recall effort failed as a recall by written agreement, pursuant to rule 61B-23.0028, Florida Administrative Code. Based on a review of the attached signature list, it would be reasonable to conclude that the respondent may have attempted to recall the listed board members by unit owner meeting but subsequently tried to convert the effort to a recall by written agreement under rule 61B-23.0028, Florida Administrative Code, utilizing the signature sheet as a collection of the signatures of the voting unit owners. However, the board's decision not to certify the recall effort would also be affirmed, as the written agreement does not substantially comply with rule 61B-23.0028(1), Florida Administrative. In fact, if the respondent submitted the signature list as a written recall agreement, it would be considered void *ab initio* due to the lack of any recall and retain lines being provided as to each of the named board members. See *The Sails Condo. Assoc., Inc. v. Unit Owners Voting For Recall*, Arb. Case No. 2004-01-4011, Summary Final Order (April 19, 2004)(written recall agreement considered void *ab initio* where ballots lacked recall and retain lines and failed to comply with numerous requirements of rule 61B-23.0028(1), Florida Administrative Code).

Accordingly, the arbitrator finds that the association correctly decided not to certify the recall effort and the board's decision is hereby affirmed.

DONE AND ORDERED this 28<sup>th</sup> day of April 2006, at Tallahassee, Leon County, Florida.

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Catherine Bemby, 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 28<sup>th</sup> day of April, 2006.

Tatiana B. Diez, Esquire  
625 N. Flagler Drive -7<sup>th</sup> Floor  
West Palm Beach, Florida 33401

Jose Ramos  
600 Village Green Court,#C108  
Palm Springs, Florida 33461

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— Catherine Bembry, Arbitrator