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

IN RE: PETITION FOR ARBITRATION

SHAUL RINGLER, et al.,

Petitioners,

v. **Case No. 2005-04-1867**

TOWER FORTY ONE ASSOCIATION, INC.,

Respondent.
_____/

ORDER DENYING MOTION FOR REHEARING/RECONSIDERATION

This cause comes before the undersigned on the "Petitioners' Motion to Rehear/Reconsider the Arbitrator's Summary Final Order, Dated December 12, 2005" filed by petitioners on December 27, 2005, and the respondent's response to the motion filed January 6, 2006. Because the arbitrator who heard the case is no longer with the department, the case was reassigned to the undersigned arbitrator.

The final order found that service on the association was accomplished in accordance with section 718.112(2)(j), Florida Statute, and rule 61B-23.0028(1)(g), Florida Administrative Code, and therefore service of the recall agreement was effective regardless of whether Mr. Ringler was personally served with the written recall agreement. The order found that the board failed to hold a meeting within five days of service of the recall agreement as required by statute, and thus the recall was deemed certified. Although the arbitrator found that the board had failed to properly perform its duty pursuant to the governing statute and rules, she certified the recall of Shaul Ringler

because the petitioners failed to allege any basis for finding the written recall agreement invalid.[1]

In their motion for rehearing or reconsideration, the petitioners allege that they were prevented from reviewing the signatures (apparently the signatures on the recall ballots) by the property manager and the association and, therefore, did not have an opportunity to challenge the ballots.

Regardless of whether the agreement was initially withheld from the petitioners' view by the property manager, the recall agreement was served on the petitioners on August 30, 2005, in this proceeding. Had the association properly handled the recall agreement, the board, including the petitioner Shaul Ringler, would have had only five business days to review the recall agreement and determine whether there was cause to reject it. In this case, the petitioners had approximately a month to review the recall agreement and determine whether there was any reason to reject it. In the order of October 3, 2005, the arbitrator stated:

> Mr. Ringler…is required to file an amended petition by 5:00 p.m. on October 7, 2005, presenting arguments as to why the recall of Mr. Ringler should not be certified. Such arguments may include allegations against the association for its actions and inactions relating to the recall process and allegations against the validity of the recall ballots, if any. Any reasons for rejecting the recall effort which are not presented in the petitioner's amended petition will not be addressed.

The order clearly required the petitioners to include in their petition the reasons for

[1] To obtain the relief sought In a "reverse recall," i.e. decertification of the recall/reinstatement to the board, the former board member must allege and prove not only that the association failed to properly hold or conduct the recall board meeting through no fault of his own, but that the recall agreement would not have been certified by the board had the meeting been properly held and conducted. In other words, the petitioner must provide the reasons the recall agreement would not have been certified had the association done things properly.

rejecting the written recall agreement. In their amended petition, the petitioners failed to provide any grounds for finding the recall agreement to be invalid. Thus, because petitioners failed to provide any reason for not certifying (or decertifying) the recall, the recall would have to be certified regardless of the inappropriate actions or inactions of the association.

In their motion for rehearing, petitioners also claim that the arbitrator should not have entered the summary final order without allowing the petitioners to take the deposition of Ms. Moraga, the property manager. On November 1, 2005, the petitioners filed a motion for leave to conduct discovery. Specifically, the petitioners requested leave to depose Ms. Jackie Moraga, stating, "Ms. Moraga's testimony is central to the factual issue of Notice, which is the crux of Petitioner's allegation." On November 7, 2005, the arbitrator entered an order noting that discovery is "intended to be used sparingly" and finding that "discovery is premature at this juncture." Petitioners have failed to provide any basis for the proposition that rehearing should be granted based on the arbitrator's refusal to allow the deposition of a property manager on an issue unrelated to the determining issue in the case.

Upon consideration of the motion for rehearing, the response, the final order, and the record in this case, it is

ORDERED:

The petitioners' motion for rehearing or reconsideration is **DENIED.**

DONE AND ORDERED this 17th day of January, 2006, at Tallahassee, Leon County, Florida.

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Diane A. Grubbs, Arbitrator
Dep't of Business and Professional Regulation
Arbitration Section
1940 North Monroe Street
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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 17th day of January, 2006:

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