

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

IN RE: PETITION FOR ARBITRATION

**SEA MONARCH CONDOMINIUM
ASSOCIATION, INC.,**

Petitioners,

v.

Case No. 2007-03-2662

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

FINAL ORDER

Procedural History

The Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) received this petition for mandatory binding arbitration for a recall dispute. This case was initiated as a recall petition filed by Sea Monarch Condominium Association, Inc. (the association) on June 1, 2007. On June 12, 2007, an Order Allowing Answer was issued¹. On July 19, 2007, the case was reassigned to the undersigned arbitrator. On the same date an Order Requiring case Management Dates and Petitioner's Response to Respondent's Response to Recall was filed. On July 31, 2007, a Notice of Final Hearing was filed. On August 17, 2007, both Petitioner and Respondent filed their Pre-Hearing Information. A Final Hearing was held on August 20, 2007. On August 27, 2007, both parties submitted Recommended Final Orders.

¹ An Amended Order Allowing Answer was filed on August 16, 2007; it did not require an answer.

Appearances

For the Petitioners: Marcus C. Aguirre, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
P.O. Box 9057
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For the Unit Owners: Eric Glazer, Esq.
Glazer & Associates, P.A.
1920 E. Hallandale Beach Blvd.
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Hallandale, Florida 33009

Statement of Issue

The issue presented for determination is whether the written recall agreement served on the Association's board of directors on May 21, 2007, should have been certified.

Findings of Fact

1. The total number of voting interests in the Association is 238.
2. To recall a board member, 120 valid recall ballots are needed.
3. Ballots representing a total of 133 units were served on the board on May 21, 2007.
4. The Association's Board of Directors held a meeting on May 24, 2007, during which it did not certify the recall.
5. The minutes of the May 24th meeting list the following reasons for the Association's decision not to certify the recall:
 - a. The recall petitions served do not meet the requisite number (120) required by the statute in that the following voting members have withdrawn their recall ballot in writing prior to 5/21/07 for all Board Members: 302, 307, 310, 312, 402, 410, 506, 705, 706, 804, 806,

1009, 1011, 1103, 1114, 1513, 1707, 1711, 1806, PH9, PH12.

- b. Recall petitions of units 308, 509, 1008, 1806 were not signed by the unit owners.
- c. Recall ballots were voted by someone other than unit owners after receipt by the designee, Glenda Wilkinson, to wit: units 705, 1007, 1110, 1209, 1413, 1506, 1807, PH 12.

6. According to testimony by Glenda Wilkinson presented at the final hearing, prior to service on the Board, up to 8 different unit owners collected ballots before finally turning them over to Ms. Wilkinson.

7. Credible testimony was presented by several unit owners both at the final hearing and by sworn affidavit that their ballots had been altered after they had submitted them.

8. The unit owner representative requested copies of the rescinded recall ballots on at least three separate occasions and was told that she could not see them for a variety of reasons, in violation of Section 718.111(12)(c), Florida Statutes².

Conclusions of Law

The arbitrator has jurisdiction of the parties and the subject matter of this dispute pursuant to sections 720.303(10) and 718.1255, Florida Statutes.

Rule 61B-81.003(1)(k), Florida Administrative Code, provides that any rescission or revocation of a homeowner's written recall ballot or agreement must be done in writing and must be delivered to the board prior to the board being served with the written recall agreements. The ballots for which revocations had been received before service of the recall ballots were properly rejected and not counted at the recall meeting.

² This is an issue for a separate arbitration petition and will not be addressed further.

The petition alleges, testimony shows, and the evidence proves that up to 8 individual ballots were altered by someone other than the person submitting the ballot. The Unit Owner Representative testified that she was the person collecting the ballots for the unit owners before they were served on the board. However, no testimony was presented to refute the fact that there were unit owners who had purposely left ballots blank that had votes cast in their names that they did not make.

Respondent argues that the case of *The Oasis II at Ventura Condominium Association, Inc., v. Unit Owners Voting for Recall*, Case No. 99-1562, dictates that the tampered ballots should not taint “the entire package of documents”. That case determined that it was,

“not necessary to hold a hearing or otherwise address whether the two allegedly altered votes were actually altered, or whether the unit owners changed their minds after casting their votes, or whether (for the sake of argument) those unit owners had decided at the outset to allege vote tampering in an attempt to circumvent the recall. If the latter were the case, and the whole recall were voided, virtually any otherwise successful recall could be undermined by one or two association “plants” who were willing to allege fraud and tampering. In any event, even without these two votes, there exists a majority of votes in favor of recall.”

“The association’s assertion that the existence of potential fraud with regard to even one ballot ‘taints the entire package of documents,’ and that the whole recall should be declared void ab initio, is rejected in this case. The association has offered the affidavits of two unit owners who claim that their votes were changed. This, in and of itself, can hardly be interpreted as evidence of widespread fraud or vote tampering.”

However, in the case currently before this arbitrator, there is uncontested evidence of fraud or vote tampering. At least 8 unit owners had their ballots changed without their consent and these unit owners are the few that came forward to point out the fraud. Glenda Wilkinson's testimony established no reliable chain of custody of the

ballots prior to her acceptance of them, and the respondent presented no evidence as to preservation of the integrity of all of the ballots collected. Moreover, the respondent's admission that the ballots were tampered with coupled with its suggestion that this fact be ignored to allow a finding that the votes cast for William Blatt and others be found valid makes it impossible for the arbitrator to do, particularly where the aroma of fraud is so pungent. With such a showing of tampering with ballots it can not be determined if the votes cast for any of the board positions are true and accurate representations of the unit owners.

Based upon the foregoing, it is ORDERED:

The Association's decision not to certify the recall is hereby AFFIRMED.

DONE AND ORDERED this ____ day of September, 2007, at Tallahassee, Leon County, Florida.

Michael B. Golen, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
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. to the following persons on this __ day of September, 2007, as indicated below:

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