

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

**IN RE: PETITION FOR ARBITRATION**

**Westland Gardens Condominium  
Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2005-06-5905**

**Unit Owners Voting For Recall,**

**Respondent.**

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**SUMMARY FINAL ORDER**

This order is entered in accordance with 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.”

On December 21, 2005, Westland Gardens Condominium Association, Inc. (the association) filed a petition for recall arbitration requesting a final order affirming the association’s decision not to certify the written recall agreement served on the association on December 5, 2005. In its petition, the association alleged that it was served with 145 recall ballots for board members Sadik Habach, Carlos Ramos, Aldo Penalver and Ricardo Berovides, but the board of directors did not certify the recall at a

special recall meeting held on December 8, 2005. The reasons cited by the association for rejecting the recall were:

- 1) The actual number of votes collected by the respondent exceeded the number necessary to recall a board member;
- 2) Eight ballots that were signed by misinformed unit owners were rescinded; and
- 3) Several ballots were duplicates.

The respondent was permitted to answer the petition for recall arbitration by order dated January 1, 2006, and filed its response on January 10, 2006. In its answer, the respondent contends that the recall should have been certified, disputing all of the association's reasons for rejecting the recall cited in its petition, as well as the total number of ballots reportedly served on the board. The respondent maintains that a total of 146 ballots were actually served on the association.<sup>1</sup> Moreover, the respondent points out that none of the reasons cited in the petition for rejecting the recall were specified in the minutes of the board's recall meeting.

Additionally, the respondent asserts (and submitted supporting affidavits from various witnesses) that the association failed to post the required notice of its recall meeting and that it did not conduct the recall meeting at the time and place it stated it did in its petition. Finally, the respondent contends that the recall should have been deemed effective, pursuant to section 718.112(2)(j), Florida Statutes, because the

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<sup>1</sup> Although the time of service was disputed, the parties do not disagree as to the date of service.

board failed to file its petition for recall arbitration within five business days of its recall meeting in which it determined not to certify the recall.

Westland Gardens consists of 280 voting interests and a total of 141 votes are necessary to recall members of the association's board. Review of the ballots reflects that a total of 146 ballots were in fact served on the board. However, all of these recall ballots were pre-marked by computer, as can be easily determined by observing the marks in the recall "boxes" adjacent to the each board member's name. Additionally, the replacement candidates' names were also pre-marked by computer as the selections to replace the recalled board members. The pre-marked ballots do not substantially comply with rule 61B-23.0028(1), Florida Administrative Code, because the unit owners could not indicate whether each of the listed board members should be recalled or retained and could not cast their own vote for the replacement candidates. See *Maya Marca Condominium Apartments, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-05-8005, Summary Final Order (February 9, 2005)(pre-checked ballots that did not permit the signing unit owner to determine whether to recall or retain individual board members did not substantially comply with rule 61B-23.0028(1), Florida Administrative Code, and were therefore invalid). Thus, the written recall agreement was void *ab initio*, prior to its service on the board.

The respondent correctly points out that the reasons cited by the association in its petition for arbitration for non-certification of the written recall agreement should not be considered because these reasons were not identified in its meeting minutes. See *Greentree Condo. Assn., Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-02-2093, Summary Final Order, (May 25, 2004)(board meeting minutes must cite the

specific reasons for non-certification of a recall agreement to comply with rule 61B-23.0028(4)(d), Florida Administrative Code).

The board's failure to timely file its petition for recall arbitration without justification for the delay would normally result in a finding that the recall is effective, by operation of statute. Likewise, the board's alleged failure to timely notice and hold its recall meeting may have resulted in certification of the recall. However, under the facts of this case, where the ballots have been pre-marked, this result cannot be reached. See *The Sails Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-01-4011, Summary Final Order(April 19, 2004)(where a recall agreement is void *ab initio*, the failure of the board to properly notice or conduct its recall meeting or to file a recall petition does not rehabilitate an otherwise invalid recall agreement).

Accordingly, the written recall agreement here fails, for the reasons stated herein, and the board's decision not to certify the recall agreement is affirmed.

DONE AND ORDERED this 19<sup>th</sup> day of January 2006, at Tallahassee, Leon County, Florida.

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Catherine Bembry, 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, postage prepaid, to the following persons, on this 19<sup>th</sup> day of January, 2006.

Ricardo Berovides  
7750 W. 26 Avenue, Ste. 4  
Hialeah, Florida 33016  
Petitioner Representative

Sarita Sanchez  
5665 W. 20<sup>th</sup> Avenue, Unit #305  
Hialeah, Florida 33012  
Unit Owner Representative

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Catherine Bembry, Arbitrator