

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

IN RE: PETITION FOR ARBITRATION - HOA

Homeowners Voting For Recall,

Petitioner,

v.

Case No. 2010-04-6707

Westridge Homeowners' Association, Inc.,

Filed with
Arbitration Section

Respondent.

OCT - 8 2010

SUMMARY FINAL ORDER

Div. of Fl. Condos, Timeshares & MH
Dept. of Business & Professional Reg.

Issue Presented

The issue in this case is whether a recall should be certified when the homeowners' association failed to have a board meeting to consider whether to certify or not certify a recall by written agreements and the number of ballots served on the association is more than 50 percent of the total number of voting interests.

Procedural History

On September 15, 2010 the homeowners' representative filed a Recall Arbitration Petition. The Petition alleges that a recall by written agreements was served on Westridge Homeowners' Association on August 31, 2010. The Petition further alleges that the board of directors of the Association did not hold a meeting to certify or not certify the recall.

On September 20, 2010, an Order Allowing Answer was entered, addressed to the registered agent for the Association. On October 5, 2010, the Association filed an Answer. This Order is entered based upon the pleadings in the file.

Statement of the Facts

1. The total number of voting interests in the association is 431. There are 3 seats on the board of directors.
2. To recall a board member, 216 valid recall ballots are needed.
3. Ballots representing a total of 252 parcels were served on the board on August 31, 2010.
4. The ballots contained 243 votes to recall Larry Lewis, 235 votes to recall Constance Primeau and 220 votes to recall Wanda Koslap.
5. The board of directors of the Association did not have a meeting to decide whether to certify or not certify the recall.
6. The Answer alleges that the recall effort did not obtain a majority of the voting interests because a number of the ballots were not signed by the owners of the lots. A list of the challenged ballots is attached as an exhibit to the Answer with no supporting documentation.
7. The form of written recall agreement/ballot used by the homeowners voting for recall substantially follows the form provided by the Division.

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.

A Summary Final Order is appropriate in this case pursuant to Rule 61B-80.114, Florida Administrative Code, which provides that at any time after the filing of the petition, if the parties do not dispute important facts in a case, the arbitrator shall decide the dispute based upon the pleadings.

Section 720.303(10)(f), Florida Statutes, provides:

If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after adjournment of the member recall meeting, the recall shall be deemed effective and the board directors so recalled shall immediately turn over to the board all records and property of the association.

The Answer relies on that portion of Rule 61B-80.102(6), Florida Administrative Code which provides:

[T]he failure of the association to timely call or hold a board meeting or to file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to comply with the provisions of these rules.

The issue, then, is whether the recall effort was "void at the outset for failing to obtain a majority of the voting interests". Arbitration cases hold recalls void *ab initio* where ballot forms conflict with the rule or when the recall effort did not obtain enough recall ballots to represent a majority of the voting interests. See *Dieppa v. Lisette Condominium Assoc., Inc.*, Arb. Case No. 2006-01-0911 (March 7, 2006); *Carlton Place Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2003-06-9241, Summary Final Order (August 25, 2003). The phrase, "void at the outset for failure to obtain a majority of the voting interests" must be read as a whole, to mean that the total number of ballots served is not more than half of the voting interests.

Respondent Association submits the recall should be considered void at the outset because of a list of ballots presented for the first time with an answer filed more than a month after service of the recall, and the unsupported claim these ballots had been signed by non-owners. Such an interpretation of the rule would make the phrase "void at the outset" meaningless, and require complete arbitration to consider each

ballot for objections not raised at a meeting, preserved in minutes or presented in a timely petition for arbitration. Individual ballots may be rejected for many reasons, but an individual ballot cannot be void at the outset.

When the rule requires certification of a recall for violation of section 720.303(10), Florida Statutes, the arbitrator may only reject an individual ballot for obvious defects within the document itself which render the individual ballot facially invalid. *Sun Isle Condominium Assoc. of Merritt Island, Inc v. Unit Owners Voting for Recall*, Arb. Case No. 2008-05-2748, Summary Final Order (October 31, 2008)(Petition for recall was filed too late; recall was certified despite claims that certain ballots were pre-marked or forged, because those facts could not be established without looking beyond the four corners of the document.)

The same rule applies to a claim that a ballot was not signed by a unit owner, unless that fact is provable on the face of the ballot. *Hibiscus Gardens Condominium, Inc v. Unit Owners Voting for Recall*, Arb. Case 2005-00-9561, Summary Final Order (March 31, 2005)(Arbitrator declined to allow evidence beyond the four corners of the ballots to determine unit ownership where the board minutes did not specify ballots that were rejected because they were not signed by unit owners.)

Base on the foregoing, it is ORDERED:

1. The recall of board members Larry Lewis, Constance Primeau and Wanda Koslap is CERTIFIED;
2. Gary Fletcher, Greg Madrid and Jeff Venne shall take seats on the board, effective immediately.
3. Within five (5) days of this Order, each of the recalled board members

shall hand over all association property and documents in his or her possession to one of the members of the new board.

DONE AND ORDERED this 8th day of October, 2010, at Tallahassee, Leon County, Florida.



Bruce A. Campbell, Arbitrator
Dept. of Bus. & Prof. Reg.
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. to the following persons on this 8th day of October, 2010:

Sue Fletcher
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Davenport, FL 33897

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Bruce A. Campbell