

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

IN RE: PETITION FOR BINDING ARBITRATION-RECALL DISPUTE

Lake Charleston Maintenance Association, Inc.,
Petitioner,

v.

Case No. 2005-00-0387

Homeowners Voting for Recall,
Respondent.

**AMENDED SUMMARY FINAL ORDER AND RESPONSE TO PETITIONER'S
UNOPPOSED MOTION FOR CLARIFICATION**

This Amended Summary Final Order is entered pursuant to Petitioner's Unopposed Motion for Clarification filed with the Division on January 31, 2005. A summary final order was entered by the Division on January 25, 2005. Upon review of Petitioner's motion and further review of the file in the underlying case, it is determined that the summary final order incorrectly ordered that an election be held to fill the vacancies created as a result of the recall, as replacement candidates were provided on the written recall ballots served on the board on December 17, 2004. However, the written recall agreement served on Petitioner sought to recall three (3) board members, representing a majority of the board, as reflected in the written recall agreement served on the board on December 17, 2004; as stated in paragraph six of the Petition for Recall submitted by Petitioner; as admitted by Petitioner in paragraph three of Petitioner's Reply to Answer of Respondent; and, as held by this arbitrator. To adopt Petitioner's interpretation of the law and allow remaining board members of an original majority

recall effort to fill a vacancy created by a board member who has resigned, moved out, or is no longer a board member after a recall effort of that board member is underway, and prior to the serving of the written recall agreement upon the board, would circumvent the rules regarding recall, which specifically provide that when the voting interests attempt to recall a majority of the board of directors, those voting for the recall shall also vote for replacement directors. The election held on December 13, 2004, which may have rendered the recall effort of Bailey Conway as moot, was not pled, asserted as a defense, or even mentioned by either party in any of the pleadings in this case prior to the issuing of the summary final order, and therefore shall not be addressed.

It is therefore ORDERED:

1. The recall of board members David Midolo, Bailey Conway, and Jane Early is hereby CERTIFIED.

2. Board vacancies resulting in the recall of David Midolo, Bailey Conway, and Jane Early, shall be filled by Wayne Grattan, Paul Siegel, and Janet Kelleher, respectively.

3. No election shall be required by the Division for the filling of the three vacancies created by the recall effort of December 17, 2004, as replacement candidates Wayne Grattan, Paul Siegel, and Janet Kelleher, were submitted by homeowners' voting for recall within the written recall agreement.

4. This Final Order shall become effective upon mailing by the Division to the association.

DONE AND ORDERED this 9th day of February 2005, at Tallahassee, Leon County, Florida.

Susan Wilkinson Harnden, Arbitrator
Homeowners' Association Mediation and
Arbitration Program
Division of Florida Land Sales, Condominiums,
and Mobile Homes
Dept. of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1030

Attorney's Fees

As provided by section 720.311(1), F.S., the prevailing party in this proceeding is entitled to have the other party pay its reasonable costs and attorney's fees. Rule 61B-80.123, F.A.C., requires that a party seeking an award of costs and attorney's fees must have requested the award in writing prior to the rendition of the final order and must also file a motion seeking the award not later than 30 days after rendition of this final order. The motion must be *actually received* by the Division within this 30-day period and must conform to the requirements of Rule 61B-80.123, F.A.C.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Amended Summary Final Order has been sent by U.S. Mail to the following persons on this 9th day of February, 2005:

Jan Michael Morris, Attorney for Petitioner
PO Box 276153
Boca Raton, FL 33427

Lester Kotok, Attorney for Respondents
7615 Thornlee Drive
Lake Worth, FL 33467

Susan Wilkinson Harnden, Arbitrator
Homeowners' Association Mediation and
Arbitration Program
Division of Florida Land Sales, Condominiums,
and Mobile Homes
Dept. of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1030