

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

**IN RE: PETITION FOR RECALL ARBITRATION**

**BRADFORD CREEK OWNERS  
ASSOCIATION, INC.,**

**Petitioner,**

**v.**

**Case No. 2022-01-9439**

**MISTY MEHAN, UNIT OWNER REPRESENTATIVE  
OF MEMBERS VOTING FOR RECALL,**

Filed with  
Arbitration Section

**Respondent.**

AUG 19 2022

**SUMMARY FINAL ORDER**

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

**Issues**

1. Whether the second recall effort rendered the first recall effort moot.
2. Whether the board of directors determined or voted to certify or not to certify the first recall.
3. Whether the second recall effort was rendered invalid because of improper conduct by the Association's management company.
4. Which homeowners should be properly serving on the board of directors.

**Procedural History**

On April 11, 2022, Bradford Creek Owners Association, Inc., ("the Association"), filed a Mandatory Binding Arbitration Form Petition – Recall Dispute against Board Member John Nussrallah<sup>1</sup> requesting that the arbitrator enter a final order that the recall served on the Association on March 28, 2022, is moot. On April 19, 2021, the Association

---

<sup>1</sup> Mr. Nussrallah is not a proper party Respondent. See, Section 720.303(10)(d), Florida Statutes.

filed a Suggestion of Mootness indicating that on April 18, 2022, the Association was served with a recall package seeking the recall of all four Board Members. On April 21, 2022, the Association filed an Amended Suggestion of Mootness which corrected a typo in the date for the Board meeting from May 25, 2022, to April 25, 2022, as the date for the Board meeting to accept or reject the second recall.

On April 22, 2022, an Order Requiring Response was issued which required the Association to file a Status Report of the results of the April 25, 2022 meeting together with a copy of the minutes of such meeting. On April 25, 2022, Misty Mehan, the Homeowners Representative in the recall, served on the Association on March 28, 2022, filed a Motion to Intervene as the proper party Respondent in this action. A Notice of Appearance of Counsel was also filed on behalf of Owners for Recall and the Homeowners' Representative. On April 26, 2022, the Association's Response to Order Requiring Response dated April 22, 2022, was filed that attached the minutes of the board meeting on April 25, 2022.

On April 27, 2022, an Order Granting Motion to Intervene, Requiring Consultation Between the Parties, and Requiring Answer to Petition was issued.<sup>2</sup> On May 2, 2022, the Association's Supplemental Response to Order Requiring Response dated April 22, 2022, was filed which included copies of the Notice for April 25, 2022, Board Meeting and the Minutes of that Meeting. On May 5, 2022, Respondent, Misty Mehan, filed an Answer to the Petition for Arbitration.

On May 9, 2022, an Order Requiring Response to Answer was issued. On May 19, 2022, the Association's Response to Order Requiring Response to Answer to Petition

---

<sup>2</sup> As a result of this order, Misty Mehan, as homeowners' representative, became the proper Respondent in the case, and the style has been edited in this order to reflect that.

for Arbitration was filed. In addition, on May 19, 2022, the Association filed a Meet and Confer Report indicating that the parties are in agreement that Mr. Nussrallah was removed and no longer serves on the Board. On May 20, 2022, Respondent filed a Reply to Association's Response to Order Requiring Response to Answer to Petition for Arbitration.

On May 23, 2022, an Order Requiring that Documents be Filed and Giving Notice of Communication was issued. On May 31, 2022, Respondent's Notice of Filing with attached documents was filed. On June 1, 2022, the Association's Supplemental Filing with attached documents was filed.

On July 21, 2022, a telephonic Hearing for Case Management was conducted with counsel for the parties participating. The issues were discussed and it was agreed that the parties would file final briefs.

On August 10, 2022, an order of reassignment to the undersigned arbitrator was entered requiring the parties to file reports concerning the board of directors. On August 5, 2022, both parties filed their briefs. On August 17, 2022, both parties filed their reports concerning which members they contend should now be properly serving on the board of directors.

#### Findings of Fact

1. The Association is the legal entity responsible for the operation and maintenance of the homeowners' community, including the responsibility to properly respond to a written recall agreement or ballots.

2. Misty Mehan (Ms. Mehan) owns a home in the community and is the homeowner's representative of the members voting for recall.

3. On Friday, March 25, 2022, at 8:45 pm, Ms. Mehan, delivered a letter to David Salvo (Mr. Salvo), the vice president of the Association's board of directors, stating that she was personally serving him with 68 recall ballots for the purpose of recalling the board president listed on the ballot [John Nussrallah]. She had placed the ballots in a sealed USPS envelope and hand-delivered it to Mr. Salvo.<sup>3</sup>

4. On March 25, 2022, Mr. Salvo sent an email at 11:41 p.m. that evening to the other three members of the board of directors, Mr. Russrallah, Anthony Carson and Russel Shafer, and to Debra Zimmerman, (Ms. Zimmerman), a property manager for Evergreen Lifestyles Management, who is the Association's management company (Evergreen). The email stated that on Friday evening he received the recall ballots.

5. On March 28, 2022, Mandy Morgan (Ms. Morgan), the C.O.O. of Evergreen, sent an email to the four board members and to Ms. Zimmerman. It was addressed to director/vice president David Salvo, and stated in part:

Subject: Re: Recall of Board Member. . . . [A]s registered agent for the Association we need to receive the envelope and letter. I can stop by your home and collect today, or you can deliver to the office. Once we have it in our possession, we can notice the meeting for the 5<sup>th</sup> business day. We need to validate the recall documents so the board can certify at the meeting that it is valid. We will open the envelope, conduct that verification, and video the process. Please confirm ASAP if I am to collect from you, or you will drop it off[.]

(Emphasis added).

6. On March 28, 2022, Mallory Etel, Support Services Manager for Evergreen wrote a note stating that on that date: "We acknowledge receipt of 68 unopened ballots

---

<sup>3</sup> The total number of voting interests in the Association is 118. Pursuant to Article IV, Section 3 of the Association's By-laws, a majority of recall ballots is required to recall a director, so the majority of the ballots is 60.

in a sealed envelope on behalf of registered agent, Evergreen . . . who represents Bradford Creek.”

7. On March 30, 2022, Ms. Morgan, on behalf of Evergreen, sent an email to the four board members, copying Ms. Zimmerman, and the Association’s attorney. The subject was: “Bradford Creek Recall Board Meeting.” It further stated: “Due to limited availability of Association Counsel, and the meeting space[,] We will need to hold the meeting at 4pm on Friday [April 1, 2022].” (Emphasis added).

8. On March 30, 2022, Ms. Mehan sent an email to Ms. Morgan that stated:

It’s now been 48 hours since I have asked, with no response from you or your office. My ballots were turned in March 25<sup>th</sup> as you were informed in email. Do you have an update from legal regarding the meeting this Friday?

(Emphasis added).

6. On March 30, 2022, both Ms. Zimmerman and Ms. Morgan sent emails to Ms. Mehan advising her that notice of the April 1, 2022 meeting was posted in both locations in the community before 4:00 p.m. on March 30, 2022.

7. On April 1, 2022, Ms. Zimmerman sent an email to Ms. Mehan with a copy of the notice of the April 1, 2022 zoom board meeting to review the recall ballots.

8. The board meeting to consider the recall scheduled for April 1, 2022 did not occur, nor was any notice sent to the membership cancelling the meeting. Evergreen decided not to hold such meeting, apparently determining that the 5<sup>th</sup> full business day for the board meeting to consider the recall began on receipt of the envelope with the ballots on March 28, 2022, so the meeting would be on April 4, 2022.

9. Sometime between March 25, 2022, and April 1, 2022, Ms. Zimmerman organized and conducted a town hall meeting of the homeowners. No notice of such meeting was filed or evidence that such notice had been properly delivered and posted.

No document was filed showing that the board of directors decided to notice and hold a town hall meeting.

10. On April 1, 2022, four days after the Association received the 68 recall ballots, Ms. Zimmerman sent an email to all the homeowners. The subject was “Bradford Creek Total Board Recall Details 4.1.2022.” It stated in pertinent part as follows:

Thank you Homeowners, for the great turnout at our Town Hall. As discussed, the Homeowners present collectively supported the recommendation to elect a replacement board to get us back on track as a community. We share this information with all homeowners as you have a right to vote. . . . As discussed, homeowners will need to vote to recall the entire board of directors to move forward. Although the recommendation is to recall the entire board so we can truly reset, you can vote to retain a member on the board on the ballot. . . . You have three options for your ballot, we need 60 votes to move forward so please be swift in getting it in: 1. Print the attached Ballot, Vote, Sign, and email to [barry.orchard@yahoo.com](mailto:barry.orchard@yahoo.com) 2. Wait for your ballot to come via mail; Vote and return it in the postage-paid envelope. 3. Visit our current property management company Evergreen Lifestyles Management . . . for a ballot to vote. Lastly, the following homeowners have stepped up to be part of the replacement board: · Richard “Ian” Brown – Director Anthony Carson · Robert Scott Page – Vice President (currently Dave Salvo) · Victor Wilson – President (currently John Nussrallah) · Mimi Ortiz-Wright – Secretary (currently Russell Shafer). Thank you as we take this path forward. If you have any questions, please email [barry.orchard@yahoo.com](mailto:barry.orchard@yahoo.com).

(Emphasis added).

11. On April 4, 2022, the Association’s board of directors timely had a meeting to consider the recall ballots served on March 28, 2022. The draft minutes of this meeting stated that a quorum was attained by the attendance of four directors. The minutes further stated that the board had received and reviewed all of the ballots, and that the management company verified that all of the ballots were facially valid. The minutes did not state that the board verified the facial validity of the ballots. The minutes stated that two board members voted to certify the recall, and two board members voted not to certify the recall.

12. On April 16, 2022, homeowner Barry Orchard (Mr. Orchard) sent a letter to Ms. Zimmerman of Evergreen just two days after the petition in this case was filed. He did not send it to the members of the board. His letter stated that he had received to date 63 recall ballots with 61 voting to recall three members of the board: Anthony Carson, John Nussrallah and Russel Shafer. It stated that only 51 ballots voted to recall director David Salvo, and that ballots are still being received and the count will likely increase. It stated that four replacement candidates were offered on the ballot and have received substantial support.

13. On April 18, 2022, Mr. Orchard, as homeowners' representative, mailed a letter to Evergreen, not by certified mail, stating that as a homeowner's representative: 'I hereby serve by personal service in accordance with Florida Statutes 720.303(10) the enclosed written recall agreements to recall members of the board of directors.' On the same date, Ms. Morgan hand-wrote on the letter that she, "C.O.O. Evergreen Lifestyles Mgmt accept on behalf of Bradford Creek HOA the Ballot Recall documents. Recall is for entire board."

14. On April 19, 2022, an email from Ms. Zimmerman to the four board members stated that a "Board of Director Total Recall Meeting" was scheduled for April 25, 2022. The agenda stated that at the meeting the board of directors would review the "Total Recall Ballots."

15. On April 20, 2022, Mr. Salvo, the vice president of the board of directors, sent an email to directors Anthony Carson and Russ Shafer, (but not to director Nussrallah), and to Ms. Zimmerman and Ms. Morgan, a notice of a special meeting of the board of directors to be held on April 22, 2022, by Zoom conference. The agenda in the notice stated that the Special meeting was to appoint vacancies on the HOA board. The

notice was also posted on the community property so that the homeowners could be aware of the meeting and attend if they wanted to.

16. On April 21, Ms. Zimmerman emailed the homeowners a notice stating that the special board meeting scheduled for April 22, 2022, was cancelled due to a lack of quorum. It also instructed them to make arrangements to remove the posting of that meeting because she was unable to be on site that date. The notice did not state that the board had instructed her to cancel the April 22d board meeting. It also did not explain how a meeting scheduled for April 22, 2022, could be cancelled for lack of a quorum when the meeting had not occurred until a day later, so a statement that a quorum was not reached was improper because it could not be determined on April 21, 2022.

17. On April 21, 2022, Mr. Salvo sent an email to John Nussrallah, Anthony Carson, Russel Shafer, and Ms. Zimmerman. It was addressed to Ms. Zimmerman and Mandy Morgan, also of Evergreen, and stated in part: "You have no authority to cancel the meeting (no majority vote of the board). Two is a quorum of the board because John has been removed from the board. . . . Russ and I will be appointing replacements for John Nussrallah and Marie Bibbs."

18. The minutes of the April 22, 2022, special board meeting, state that board members Mr. Salvo and Mr. Shaffer were present, and that "with two Board Members present quorum was established." Mr. Salvo made a motion to appoint Stan Byrdsell to fill the vacancy left by Mr. Nussaralla's recall. The motion was seconded and approved. A separate motion was made and approved to replace a vacancy on the board left by director Marie Bibb, and Aman Mehan was appointed to fill the vacancy. After the appointments were made, the minutes state that director Russell Shafer resigned and that the other directors appointed Misty Mehan to fill his vacancy.



19. On April 25, 2022, a meeting of the board of directors was held to consider the April 18, 2022 recall. The minutes reflect that no quorum was established as only one director – Dave Salvo – was in attendance. The minutes do not reflect that the board determined or voted to certify or not certify the recall of the four directors subject to the second recall.

20. On May 4, 2022, a board of directors organizational meeting was held. Directors Victor Wilson, David Salvo, Robert Scott Page, Mimi Ortiz-Wright, and Richard Ian Brown were present. In addition to Mr. Salvo, the four other directors were the four candidates voted for on the second recall ballots. The meeting did not state who and when such other four directors were determined to be board members. Motions were made to appoint officers of the board.

21. On May 19, 2022, a board meeting was held. It stated that directors Victor Wilson, Mimi Ortiz, Scott Page, Dave Salvo, and Ian Brown were present. Community business was discussed and acted upon.

#### Conclusions of Law

The arbitrator has personal jurisdiction of the parties and subject matter jurisdiction of the dispute. The parties have filed briefs requesting a summary final order. The arbitrator concludes that summary disposition is appropriate pursuant to Rule 61B-80.114, Florida Administrative Code.

#### Whether the Second Recall Rendered the First Recall Moot

The Association alleged in its petition, and in other filings, that this case – which it filed – is moot, because on April 18, 2022, the Association’s management company was served with a second recall package of ballots sufficient in number to recall the 4 sitting directors of the board: Mr. Nussrallah, Anthony Carson, Russell Shaffer, and Dave Salvo.

The minutes of the board meeting to consider this recall, on April 25, 2022, state that only one board member, Mr. Salvo, was present and no quorum was established. They do not state that the board voted to certify or not to certify the recall.

The Association takes the position that because no meeting was held by a quorum of directors to consider the second recall, the recall of the four members sought to be recalled became effective as a matter of law, citing section 729.303(10)(f), Florida Statutes. The arbitrator concludes that this case is not moot. First, the arbitrator must rule on the validity of the first and second recall efforts. Second, the arbitrator must fashion an appropriate remedy to determine which homeowners should properly be current members of the board.

#### The March 28, 2022 Recall

Section 720.303(b)(1) states in pertinent part: “[T]he agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.” The parties disagree when the recall ballots were properly served on the Association. Respondent argues that they were served on vice president Mr. Salvo on Friday night at 8:45 pm. The Association argues that the ballots were received on March 28, 2022, when Mr. Ertel, Evergreen Services Manager, accepted the ballots in a sealed envelope. The Association is correct. Rule 61B-81.003(g), Florida Administrative Code provides in pertinent part:

The written agreement or a copy shall be served on the board by certified mail or by personal service. Service on the board after 5:00 p.m. on a business day or on a Saturday, Sunday or legal holiday . . . shall be deemed effective as of the next business day that is not a Saturday, Sunday or legal holiday. Service of the written agreement on an officer, association manager, board director or the association’s registered agent shall be deemed effective service on the association[.]

Mr. Ertel was not served by certified mail or by a process server. The applicable statute and rule are unambiguous. Section 720.303(10)(b)1., states in part that: “The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.” See, sections 48.011, and 48.081. See, also Fla.R.Civ.P. 1.070 Applying these unambiguous provisions would result in a conclusion that the recall ballots were not properly served on the Association. However, Division precedent has created an exception to these provisions. In *Courtyards at Boca Homeowners Association, Inc. v. Homeowners Voting for Recall*, Arb. Case No. 2015-02-2818, Summary Final Order (September 10, 2015), the recall ballots were served on the association’s property manager by email. The arbitrator concluded:

Cases consistently have held that where there is no dispute as to when the association received the recall agreement, the method of delivery is of no significance, as the law only requires formal service in order to determine exactly when the agreements were received.

The arbitrator cited cases for this exception involving service considered proper when the ballots were served by a van driver to the association’s bookkeeper at the association’s mailing address; by United Parcel Service; and by hand-delivery.<sup>4</sup> Therefore, in this case there is no real dispute concerning when the ballots were served because the evidence established that the management company received them on March 28, 2022. Thus, service of the first recall ballots was proper and the method of delivery was insignificant.

The next issue is whether the recall of Mr. Nussrallah was deemed effective. It was. Rule 61B-81.003(3)(a) and (b) provide in pertinent part:

---

<sup>4</sup> This rule is the same when delivery is made on a condominium association. See, *Williamson v. Isle of Sand Key Condominium Association, Inc.*, Arb. Case No. 2020-04-6139, Corrected Summary Final Order (January 4, 2021).

(a) Certified Recall. If the board votes to certify the written agreement to recall, the recall shall be deemed effective upon certification[.]

(b) Non-Certification of Recall by the Board. If the board votes not to certify the written agreement to recall for any reason, the following provisions apply[.]

(Emphasis added). In this case, the board did not vote to certify the recall or vote to not certify it. Instead, the vote was tied 2 – 2.

Section 720.303(10)(b)(2) provides in pertinent part.

At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors, in which case such director or directors shall be recalled effectively immediately . . . , or proceed as described in paragraph (d).

Paragraph (d) provides in pertinent part:

If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall [file a petition for binding arbitration].

(Emphasis added). See, *also*, Rule 61B-81.003(a), (b). (same).

The arbitrator concludes that the failure of the board at the meeting on April 4, 2022, to determine or vote to certify the recall or not to certify the recall is tantamount to not holding a meeting at all. This is because the statute and rule are mandatory – the board must do one of two options provided – but it did neither. Section 720.303(f) provides that: “If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement . . . the recall shall be deemed effective[.]” Thus, the arbitrator concludes that the first recall ballots were facially valid, and because a majority of the ballots voted to recall Mr. Nussrallah, he was deemed recalled.

#### The April 18<sup>th</sup> Recall

The Association has argued that this recall was valid. Respondent agrees. However, the arbitrator disagrees. He concludes that the second recall effort was invalid

because it was improperly orchestrated and accomplished by the management company, through Ms. Zimmerman, to nullify the March 28, 2022 recall; cancel the special board meeting of April 22, 2022; recall the three remaining directors after the March 28<sup>th</sup> recall; and install a new five member board consisting of three replacement candidates, plus Mr. Salvo who was not recalled, and a fifth director to fill the vacancy of Ms. Gibb.

Recalls are supposed to be grass-roots efforts where, on behalf of homeowners who are dissatisfied with one or more directors, a homeowner representative of such homeowners creates recall ballots, distributes them to other homeowners in the hopes of getting a majority of them to vote to recall a certain director or directors, and collects the ballots to be served on the board. This was not done here.

The town hall meeting had to have been accomplished between the March 28<sup>th</sup> recall being served, and April 1, 2022, the date of Ms. Zimmerman's email to the membership described in findings of fact nos. 9 and 10 above. The Association has not filed a notice setting the town hall meeting, showing who set it, or any minutes that may have been taken at the meeting.

However, Ms. Zimmerman's email of April 1<sup>st</sup> to the membership shows that she was the one who orchestrated the second recall attempt, by showing that she: (1) thanked the homeowners for attending the town hall; (2) stated that election of a replacement board was "to get us back on track"; (3) stated that "we need 60 votes to move forward so be swift in getting it in"; (4) again thanked the homeowners "as we take this path forward"; (5) solicited the membership to sign a recall ballot; (6) attached a recall ballot listing all four board members; (7) gave explicit instructions to (a) print the ballot, vote, sign it and email it to homeowner Barry Orchard, (b) wait for the ballot to come by mail, vote and return it in the postage-paid envelope, or (c) visit the property management

company for a ballot to vote; and (8) named on the ballot four replacement candidates and stated that one of them would become the president, one would become the vice president, and one would become the secretary.

This email was improper and the antithesis of a normal grass-roots recall effort because it was orchestrated by the property manager. It was not done by a group of homeowners and their representative, who created the recall ballot, distributed it to the members asking them to consider it and vote to recall directors, and collected the ballots and served them on the board.<sup>5</sup> The findings of fact show that there was a power struggle going on in the community over who should be on the board. Ms. Zimmerman sided with one group who did not want the three remaining board members in addition to Mr. Nussrallah to be on the board, but wanted other members to be on the board.

Moreover, on April 21, 2022, Ms. Zimmerman sent another email to the membership telling them that the special meeting properly noticed and scheduled by the vice president, Mr. Salvo, for April 22, 2022, "is cancelled for no quorum", and asking them "to remove the postings of the notices for such meeting." This was also improper. No evidence was filed stating that the board made the decision to cancel the April 22d special meeting, instructed Ms. Zimmerman to advise the membership of such cancellation, and instructed her to ask the members to tear down the posting of the notice of the meeting. Moreover, how could Ms. Zimmerman have known on April 21, 2022, that

---

<sup>5</sup> It is true that Ms. Zimmerman's email instructed the members to, as one method, deliver their ballots to Mr. Orchard, and that Mr. Orchard delivered the ballots to Evergreen. However, the arbitrator concludes that it was the management company who orchestrated this recall and used Mr. Orchard merely as a member to assist it. Even if Mr. Orchard totally orchestrated the recall, it was improper for the management company to assist him in doing so. Management companies should only be involved administratively in recall efforts after a homeowner representative delivers recall ballots to the Association, and should not assist the homeowner with the recall effort prior to delivery of the ballots as Ms. Zimmerman did here.

no quorum would be present at the special meeting on April 22, 2022. She could not have. This email was also improper. Moreover, it was for the board, not Ms. Zimmerman to reschedule the board meeting from April 1, 2022, to April 25, 2022.<sup>6</sup> The arbitrator concludes that Ms. Zimmerman's improper actions tainted and rendered invalid the second recall effort.

### Remedy

The Association filed the petition in this case, and the only relief it requested was an order determining that this case is moot. The arbitrator cannot provide such relief because, as discussed above, this case is not moot, nor did it become moot because of the April 18<sup>th</sup> recall, because that recall was invalid.

Rule 61B-80.121(6), Florida Administrative Code, provides in pertinent part:

The arbitrator in the final order may grant mandatory, or prohibitory relief, declarative relief, or any other remedy that is just and equitable. . . . Relief may include certification of an election or recall, decertification of an election or recall, a requirement that a new election be held, . . . requiring a board to fill a vacancy or hold an election to fill a vacancy, requiring a director to return association records to the board, or other relief as may be appropriate in a given case.

The rule gives this arbitrator authority and discretion to fashion a proper remedy in this case, as is ordered below. The arbitrator is greatly concerned about what occurred in this case prior to the filing of the petition, that included irregularities and improper actions by the property manager, on behalf of unknown persons. The remedy provided is in part guided and fashioned as a result of such irregularities and improper actions.

---

<sup>6</sup> Moreover, the actions of Ms. Morgan, the C.O.O of Evergreen, in her email to the board on March 28, 2022, were improper. She stated that Evergreen needed to verify the recall documents so the board can certify at the meeting, and that Evergreen will open the envelope containing the ballots and conduct that verification. It is the board's responsibility – not the management company's – to verify the recall by reviewing the ballots for facial validity and to oversee the count of the ballots to determine if a majority of the voting interests voted for the recall.

The question is: who should be the proper members of the Association's board of directors as of the date of this Summary Final Order.<sup>7</sup> This order will certify the March 28, 2022, recall of John Nussrallah, because there were more than a majority of facially valid ballots by the members to recall him delivered to the Association, and because the board did not, in effect, hold a timely meeting where it determined or voted to certify or not to certify his recall. Thus, Mr. Nussrallah was deemed recalled on August 4, 2022, and is no longer a proper member of the board.

The special board meeting noticed by vice president Salvo, and held on April 22, 2022, show that that two of the three remaining directors, Dave Salvo and Russ Shafer, were present and participated. The Association argues incorrectly that because the board has five seats, and even though the 5<sup>th</sup> seat was vacant due to the earlier resignation of Marie Bibbs, two members did not establish a quorum, presumably believing that three members were necessary to establish a quorum. It has cited no authority for this argument. The arbitrator disagrees. On the date of this meeting, after Mr. Nussrallah's recall, there were three directors on the board. The minutes of this meeting correctly established that the attendance of two of the three directors established a quorum.

At the meeting, the board properly appointed Stan Byrdsell to replace the vacancy created by the recall of Mr. Nussrallah; thus, Mr. Byrdsell became on that date a proper member of the board. See, section 720.303(10)(e) ("If a vacancy occurs on the board as a result of a recall and less than a majority of the board of directors are removed, the

---

<sup>7</sup> In response to an order, the parties submitted a list of who they thought should be on the board of directors as of April 5, 2022. The Association's list was: Mr. Wilson, Ms. Ortiz-Wright, Mr. Schott, Mr. Brown, and Mr. Salvo. Respondent's list was: Mr. Salvo, Mr. Byrdsell, Mr. Mehan, Ms. Mehan. Respondent's list stated that Mr. Carson had recalled in the second recall. However, the arbitrator concluded above that the second recall was invalid, leaving Mr. Carson on the board.



vacancy may be filled by the affirmative vote of a majority of the remaining directors[.]”);  
Bylaws, Article IV, Section 3.

At the same special meeting, the board appointed Aman Mehan to replace director Marie Bibb, who had resigned previously; thus, on that date, Mr. Mehan became a proper member of the board. At the meeting, director Anthony Carson was a member of the board; and although he was recalled in the second recall effort, the second recall was invalid. Thus, he is a proper member of the board. At the meeting, Mr. Schaffer resigned, and the board, comprised of Mr. Salvo, Mr. Byrdsell and Mr. Mehan, appointed Misty Mehan to fill the vacancy created by Mr. Schaffer’s resignation. Thus, Ms. Mehan is a proper member of the board. Finally, David Salvo is and has been, a proper member of the board. Thus the current board should be Mr. Salvo, Mr. Byrdsell, Mr. Carson, Mr. Mehan and Ms. Mehan.

With the exception of David Salvo, the other four members currently on the board, see, findings of fact nos. 21 and 22, are not proper members of the board because they became directors only through the highly irregular second recall effort which the arbitrator has concluded was invalid. The arbitrator notes that the next regularly scheduled election of the board is in October, 2022. Therefore, the homeowners will decide who should be on the board after the election. It is therefore,

**ORDERED AND ADJUDGED** that (1) the relief requested in the petition to rule that this case is moot is denied; (2) the recall of John Nussrallah is certified; and (3) as of the date of this summary final order, the proper members of the Association’s board of directors are Stan Byrdsell, Anthony Carson, David Salvo, Aman Mahan, and Misty Mehan, and they shall take their seats immediately. If any of such directors decline to serve, the remaining directors may fill any vacancy thus created by appointing a new

director or directors to fill any such vacancy; (4) current board members Victor Wilson, Mimi Ortiz-Wright, Scott Page, and Ian Brown, are hereby removed from the board immediately and shall return to the Association any records or other property belonging to the Association; and (5) Respondent is the prevailing party.

**A COPY OF THIS SUMMARY FINAL ORDER SHALL BE DELIVERED BY THE ASSOCIATION TO EVERY HOMEOWNER, AND POSTED IN A LOCATION ON THE ASSOCIATION PROPERTY WHERE NOTICES ARE ROUTINELY POSTED.**

DONE AND ORDERED this 19th day of August, 2022, at Tallahassee, Leon County, Florida.



Keith E. Hope, Arbitrator  
Office of the General Counsel  
Condominium Arbitration and  
Mediation Program  
Dept. of Business &  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399-1030  
Telephone: 850.414.6867  
Facsimile: 850.487.0870

**Certificate of Service**

I HEREBY CERTIFY that on August 19, 2022, copies of the foregoing were served

by U.S. Mail and email to:

Karen Wonsetler, Esq.  
Wonsetler & Webner, P.A.  
717 N. Magnolia Avenue  
Orlando, Florida 32803  
Email: [karen@kwpalaw.com](mailto:karen@kwpalaw.com)  
Attorney for Petitioner

Barbara Billiot Stage, Esq.  
Stage Law Firm, P.A.  
7635 Ashley Park Court, Suite 503  
Orlando, Florida 32825  
Email: [bbstage@stagelaw.com](mailto:bbstage@stagelaw.com)

Attorney for Respondents



---

Keith E. Hope