

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

**IN RE: PETITION FOR ARBITRATION**

**LANTANA OCEANFRONT CONDOMINIUM  
ASSOCIATION, INC.,**

**Petitioner,**

**v.**

**Case No. 2006-00-6064**

**UNIT OWNERS VOTING FOR RECALL,**

**Respondent.**

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**SUMMARY FINAL ORDER**

This final order is entered pursuant to 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 February 2, 2006, Lantana Oceanfront Condominium Association, Inc. (respondent or association), filed a petition for recall arbitration with the Division. Subsequently, the case was assigned to the undersigned arbitrator. After reviewing the petition, the arbitrator was unable to determine if a recall by written agreement or a recall by unit owner meeting was attempted, if either. Thus, on February 14, 2006, the arbitrator issued an order requiring both the petitioner and the unit owner representative to show good cause in writing why the petition should not be dismissed. The parties timely submitted their responses, with both parties admitting that the documents served

on the board were to serve as a written recall agreement in an attempt to recall four of the seven members of the board. Furthermore, on behalf of the respondent, the unit owner representative admitted that the recall agreement did not comply with rule 61B-23.0028, Florida Administrative Code; there were no separate recall and retain spaces next to each board member's name sought to be recalled. Regardless of this admitted deficiency, the respondent argues that the recall agreement should nevertheless be certified because the "entire recall process was carried out in good faith and diligence," and because a majority of the unit owners voted to recall the four members contained in the recall agreement. However, recalls—whether by written agreement or by unit owner meeting—must adhere to the administrative rules adopted by the Division, which, although they appear to be merely technical, are intended to ensure that each recall of every board member is fair and consistent, in light of a majority of the unit owners being able to recall a board member with or without cause. Thus, even though it appears that a majority of the unit owners may have intended to vote to recall four members of the board in this instance, the failure to provide recall and retain spaces did not allow the unit owners to vote to retain any individual board member. This is a fatal flaw, well established in arbitration case law,<sup>1</sup> which renders the written recall agreement invalid.

It also bears mention that it appears only 49 votes, exactly a bare majority, were obtained (without taking into account if, in fact, these unit owners were authorized to cast a vote for their respective unit), as one vote was rescinded (unit 3204), and multiple votes were cast for the same units (units 1103, 2301, 2305, 2405, and 4306). Section 3.5(a) of the condominium bylaws, allows *only* one vote per unit owned. Therefore,

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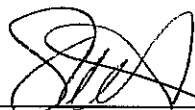
<sup>1</sup> For cases supporting this ruling, see the arbitrator's order of February 14, 2006, and *Bay Tree Patio Homes Condo. Assn., Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-04-6650, Summary Final Order (January 13, 2005); *Greye v. Alpine Woods Assn., Inc.*, Arb. Case No. 2004-02-6686, Summary Final Order (January 7, 2005); and *Delray Oaks Condo. Assn., No. 2, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2003-07-3482, Summary Final Order (August 15, 2003).

caution should be taken by any group of unit owners where only an exact majority of votes is obtained, by exceeding the bare majority of votes in the instance that a few of the ballots are properly rejected by the board and the recall effort is otherwise successful.

Based on the foregoing, the petitioner's decision to reject the recall agreement is **AFFIRMED.**

**As previously directed in the order of February 14, 2006, the unit owners and the unit owner representative should review section 718.112(2)(j), Florida Statutes, rules 61B-23.0026-23.0028, Florida Administrative Code, and past recall arbitration decisions at [www.myflorida.com/dbpr/lsc/arbitration](http://www.myflorida.com/dbpr/lsc/arbitration). A sample ballot form and guidelines for recalls are also available at the Division's website. Please note, these materials in no way serve as a substitute for legal advice. If there are questions concerning the law, the unit owners are strongly urged to consider seeking the advice of a licensed, Florida attorney familiar with community association law and the recall process.**

DONE AND ORDERED this 1st day of March, 2006, at Tallahassee, Leon County, Florida.



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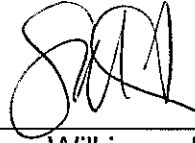
Susan Wilkinson Harnden, Arbitrator  
Division of Florida Land Sales,  
Condominiums, and Mobile Homes  
Dept. of Business & Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

**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 to the following persons on this 1st day of March, 2006:

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Representative for Unit Owners Voting for Recall



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Susan Wilkinson Harnden, Arbitrator