

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

IN RE: PETITION FOR ARBITRATION

**ASHLEY ARMS CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2004-04-6644

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

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."

PROCEDURAL HISTORY

On September 9, 2004, Ashley Arms Condominium Association, Inc. (Association) filed a petition for recall arbitration. Pursuant to Rule 61B-50.107(3), Fla. Admin. Code, the group of unit owners who voted to recall the board members is the respondent in this action. In accordance with rule 61B-50.105(5), Fla.

Admin. Code, on September 24, 2004, a copy of the petition was sent to Respondent's representative along with an Order Allowing Answer to Petition for Recall Arbitration. An order was also sent to the Association directing it to supplement the record with the provisions of the condominium documents that require voting certificates or multiple signatures for units owned by more than one person and evidence that the Association had enforced the requirements in the past two years. On October 11, 2004, the Association filed its Notice of Filing Supplemental Information, which consisted of the relevant provisions of the condominium documents and an exhibit consisting of several limited proxies having two signatures.¹

Annemarie Murphy, Respondent's representative, received the Order Allowing Answer on October 2, 2004. The order provided Respondent fourteen (14) days from receipt of the order in which to file an answer. The order stated that Respondent, in its answer, must identify all facts in the petition that Respondent disputed and that if Respondent didn't file an answer, it would be presumed that Respondent admitted the facts alleged. The answer to the petition should have been filed on or before Monday, October 18, 2004. As of the date of this order, Respondent has not filed an answer to the petition or any other paper or pleading. This order is entered accordingly.

FACTS

There are 44 voting interests in Ashley Arms Condominium Association, Inc, thus, a total of 23 valid votes are needed to successfully recall a member of the

¹ The supplemental materials were insufficient to establish that the voting certificate-multiple signatures

Association's board. There are three members of the board of directors: Linda Studenski, Marcella Fabbri, and Elliot Woods. Respondent sought to recall all three members of the board. Linda Studenski received 23 recall votes, and Marcella Fabbri and Elliot Woods each received 24 votes.

The written agreement consisted of 24 preprinted agreements, or ballots, in the form suggested by DBPR on its website. Each ballot contained the names of the three board members sought to be recalled, with a box for "recall" and a box for "retain" by each name. Each ballot had a list of replacement candidates, and instructed the unit owner to vote for no more than three. Each ballot had a space for the unit owner's name, unit number, unit owner's signature and the date signed. Each ballot also named Annemarie Murphy, 4111 NE 21 Way, #207, Lighthouse Point, Florida, as the unit owner's representative.

Respondent served the Association with the written recall agreement on August 27, 2004, and the board determined not to certify the recall at a meeting held on September 2, 2004. The petition for arbitration alleged the following reasons for the recall not being certified by the board:

- (1) The ballot for Unit 2A was rejected because Edward J. Blatnik signed it, and he was not the unit owner of Unit 2A at the time the written agreement was served on the board. As of August 25, 2004, the owner of Unit 2A was Virginia Lane.

(2) The ballot for Units 11B was rejected because Edward Blatnik, the unit owner, informed the board in writing on September 1, 2004, that the ballots he signed did not contain any check marks.

(3) The ballot for Unit 7B was rejected because the ballot was not dated.

(4) The vote for Unit 203 was rejected because the unit was jointly owned by Irene Becker and Andrew Becker, but the vote submitted for Unit 203 was signed by Andrew Becker only.

Because Respondent failed to file an answer to the petition, the facts alleged in the petition are deemed admitted. Northlake Village Condominium Ass'n 1, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 95-0448, Summary Final Order (February 9, 1996). A summary final order can be entered based on the facts alleged and the material filed with the petition. Greenglades Condominium Ass'n, Inc v. Colletti, Arb. Case No. 93-0156, Summary Final Order (August 31, 1993).

DISCUSSION

The ballot submitted for Unit 2A was signed by Edward Blatnik, who was not the owner of Unit 2A at the time the agreement was submitted to the board. Because Mr. Blatnik was not the unit owner of Unit 2A when the agreement was submitted to the board, the recall ballot submitted for Unit 2A was properly rejected. See Board of Administration of the Sea Monarch Condominium Ass'n, Inc. v. Group of Members of the Ass'n, etc., Arb. Case No. 95-0246, Amended Summary Final Order (December, 18, 1995)

Unit 11B is owned by Mr. Blatnik. On September 1, 2004, after the written recall agreement was submitted to the board, but before the board met to determine

whether to certify the agreement, Mr. Blatnik gave the board a written statement attempting to withdraw the agreements he signed for Units 11B and 2A. Mr. Blatnik stated that as to Units 11B and 2A he “was mistaken as to what he was signing,” that he “was withdrawing and voiding” the recall ballots for Units 2A and 11B, and that he “did not place any check [marks] in any box on the ‘recall’ statements.”

A long line of arbitration cases has consistently held that recall ballots cannot validly be revoked or withdrawn after service of the agreement on the board. See, e.g., Arlington Park Condo. Ass’n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 2003-05-4942, Summary Final Order (June 5, 2003); Courts of Invarry Condo. Ass’n, v. Shepard, Arb. Case No. 94-0274, Final Order (January 18, 1995)(absent unique circumstances, withdrawal or revocation of signature on recall agreement is not effective unless received by the time the board receives the recall agreement). A retraction or revocation of a ballot or signature after service of the agreement on the board is not valid even when the unit owner alleges that his or her signature was obtained through misrepresentation and false pretenses. Bd. of Admin. of the Hialeah Club Villas Condo. Ass’n, Inc. v. Group of Members, etc., Arb. Case No, 95-0012, Summary Final Order (July 24, 1995).

However, although a unit owner cannot withdraw his ballot after the submission of the written agreement, the board may consider and act on allegations concerning the validity of the ballot after the written agreement has been served on the board. The board is not bound by what appears on the face of the ballot. See, Villa Dorada Condo. Ass’n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 96-0343, Final Order (December 9, 1996)(board can reject ballot when the signature on

the ballot does not match the unit owner's signature); James Place Condo. Ass'n, Inc. v. The Group of Members, etc., Arb. Case No. 93-0227, Summary Final Order (October 27, 1993)(where the holder of power of attorney fails to provide the board with evidence of his authority to vote for the unit owner prior to the meeting to certify, the ballot can be properly rejected.)

The issue in this case is whether the board is required to accept, without question, a ballot for recall that appears valid on its face (the ballot for Unit 11B) even though the unit owner has advised the board in writing that he did not check the recall boxes on the form. He signed a blank ballot.

There are several cases holding that when a signed ballot is submitted with a recall agreement, and the signed ballot is blank or does not have the "recall" space or box next to the board member's name checked, the ballot cannot be considered a vote for recall. See, e.g., Sailboat Cay Condo. Ass'n, Inc., v. Group of Members of the Ass'n, etc., Arb. Case No. 97-0317, Final Order (January 27, 1998); Horizons West Condo. #1 Ass'n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 00-1641, Final Order (October 19, 2004). Therefore, had Mr. Blatnik's ballot been submitted to the board as it was when he signed it -- with no check marks on it -- the ballot could not have been counted by the board as a recall vote for anyone.

Although additions to a ballot can be made by other persons when the addition only clarifies the unit casting the vote (like adding the unit number), any addition that changes the voting intent of the unit owner invalidates the ballot. See Hidden Forest Condo. Ass'n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 02-5347, Summary Final Order (August 29, 2002). In this case, the unit owner, in a signed

statement to the board, stated that he did not put any check marks on his ballot. This statement was not challenged before the board, and it has not been challenged in this proceeding. Therefore, it is accepted that Mr. Blatnik signed a ballot that had no check marks and that the check marks placed in the recall boxes were added later by someone else. Whatever Mr. Blatnik intended by turning in a blank ballot, his vote has been subverted by the addition of the check marks in the recall boxes on his ballot. Adding check marks to recall a board member on a signed blank ballot constitutes vote tampering, and the board was justified in rejecting the ballot submitted for Unit 11B.

Because two of the ballots were properly rejected, the recall fails regardless of the validity of the other two ballots.

Based on the foregoing, it is

ORDERED:

The association's decision not to certify the recall of board members Linda Studenski, Marcella Fabbri, and Elliot Woods is hereby approved and affirmed.

DONE AND ORDERED this ____ day of October, 2004, at Tallahassee, Leon County, Florida.

Diane A. Grubbs, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

CERTIFICATE OF MAILING

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 ____ day of October, 2004.

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