

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

**IN RE: PETITION FOR ARBITRATION - HOA**

**Las Colinas Village  
Neighborhood Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2009-05-1695**

**Homeowners Voting For Recall,**

**Respondent.**

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**SUMMARY FINAL ORDER**

Statement of Issue

The determinative issue in this case is whether a rescission should be disregarded if the homeowner who executed the rescission did so because the homeowner believed misleading information.

Procedural History

On September 24, 2009, Las Colinas Village Neighborhood Association, Inc. (the Association) filed a petition for recall arbitration. On October 2, 2009, an Order Allowing Answer was entered, directed to the homeowners' representative designated in the written agreement. On October 8, 2009, an Answer to the Petition was filed. On October 9, 2009, Petitioner filed a Reply. This Summary Final Order is based upon the pleadings in the file.

Findings of Fact

1. The total number of voting interests in the association is 107, so 54 votes

are required for a recall.

2. Ballots representing a total of 57 parcels were served on the board on September 10, 2009, seeking the recall of Kathleen Hume and Ronald Jacobson.

3. The Board of Directors of the Association held a meeting on September 17, 2009, at which it did not certify the recall.

4. Although the minutes of the board meeting of September 17, 2009, recite a number of reasons to not certify, the primary reason was that the board had received 6 rescissions of ballots included in the 57 served on September 10.

5. Respondent admits that 5 of the rescissions were delivered to the board prior to service of the recall agreements, but provides affidavits which establish that 4 of those were executed only because the homeowners who executed the rescissions did so because the homeowners believed misleading information.

#### 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(3), 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 summarily enter a final order affirming the decision not to certify the recall.

Rule 61B-80.102(3)(h), Florida Administrative Code, provides that, "The fact that a homeowner may have received misinformation is not a valid basis for rejecting a recall agreement and shall not be considered by the arbitrator." Because the arbitrator cannot consider the reasons for executing a recall ballot, the intent of the rule requires that the

arbitrator not consider reasons for executing a rescission. See, *12590 Coronado Towers, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2005-01-3731, Summary Final Order (April 6, 2005)(in condominium recall, arbitrator would not consider claim unit owners executed rescissions because they had been told untruths).

After 5 ballots are subtracted from the total of 57 served on the board, the recall effort is left without a sufficient number of votes.

Based on the foregoing, it is ORDERED that the decision of the board of directors to not certify the recall is Affirmed.

DONE AND ORDERED this 15th day of October, 2009, at Tallahassee, Leon County, Florida.

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Bruce A. Campbell, Arbitrator  
Dept. of Bus. & Prof. Reg.  
Arbitration Section  
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Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a copy of the foregoing summary final order has been sent by U.S. Mail to the following persons on this 15th day of October, 2009:

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