

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

IN RE: PETITION FOR BINDING ARBITRATION - HOA

**Hidden Lakes at Meadow Woods
Homeowners' Association, Inc.,**

Petitioners,

v.

Case No. 2009-04-8602

Homeowners Voting for Recall,

Respondent.

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SUMMARY FINAL ORDER

On September 10, 2009, Hidden Lakes at Meadow Woods Homeowners' Association, Inc. (the Association) filed a petition for mandatory binding arbitration of a recall dispute. On September 23, 2009, Jack Miller, the owner representative, was served with a copy of the petition and an order requiring answer. The order requiring answer directed the Respondent, the owners voting in favor of the recall, to file an answer to the petition within twenty days of receipt of the order. The order further provided that failure to file an answer to the petition may result in the admission of all facts contained in the petition. As of the date of this order, the Respondent has not filed an answer. As the Respondent has not disputed the facts stated in the petition, it is appropriate to enter a summary final order in accordance with Fla. Admin. Code R. 61B-80.114.

Findings of Fact

1. Hidden Lakes at Meadow Woods Homeowners' Association, Inc., is the corporate entity responsible for the operation of the Hidden Lakes community.
2. On August 26, 2009, 2009, the Association's former management company, Sentry Management , was served "proxies."
3. 110 of the proxies (form proxies) contained the following the statement:

We, the owners and members of the Home Owners Association of Hidden Lakes, petition and vote by proxy to remove Samuel Colon, Helen Gacula, Kasper Mannex, Maricela Torres and any other officers and directors currently serving the Home Owners Association of Hidden Lakes and call for a meeting on Friday the 28th of August, 2009, at the clubhouse at 7 pm. to elect a new President, Vice-President, Secretary and Treasurer.
4. The statement was followed with lines for printed name, signature, street address and telephone number.
5. The recall materials served on the board also contained a letter from Irsis Vaness Rodriguez addressed to Jack Miller by which Rodriquez sought to vote by proxy to remove Samuel Colon, Helen Gacula, Casper Mannex, Marcilla Torres and any other officer or director serving the Association.
6. The recall materials contained an e-mail from Mrs. E.A. Dowling to an unknown addressee asking the unknown addressee to vote on her behalf to remove the president of the board.
7. The Homeowners held a homeowners meeting on August 28th, 2009, to recall the above named board members.
8. The Association board of directors met on September 2, 2009, at which time the board chose not to certify the recall.

9. The minutes of the board meeting state that ballots (proxies) were rejected for the following reasons:

- a. 7 were signed by a tenant or resident who is not the owner;
- b. 2 ballots listed the incorrect address for the property;
- c. 2 ballots had misspelled the owners' names;
- d. 2 rescissions were received before the proxies/ballots were served on the Association;
- e. The recall was rejected in its entirety as a recall by owner meeting because the meeting had not been properly noticed.

Conclusions of Law

All the homeowners voting in favor of the recall are the respondent in this matter. The undersigned has jurisdiction over this matter pursuant to §§ 720.303(10), 720.311, and 718.1255 Florida Statutes.

The Respondent has not filed an answer to the petition. Therefore, the facts alleged in the petition will be presumed true and the exhibits attached to petition will be deemed accurate.

Because the Association was not certain whether the attempted recall was a recall by written agreement or homeowner meeting, the Association has addressed both scenarios in an abundance of caution. As discussed below, the recall fails either as a recall by written agreement or by unit owner meeting.

Written Recall Agreement

When considered as a written recall agreement, the form proxies violate 61B-81.003(1)(b), Fla. Admin. Code, by failing to provide spaces by the name of each

director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled or retained. *Pine Glenn at Abbey Park I Homeowners Ass'n, Inc. v. Owners Voting for Recall*, Arb. Case No. 2008-01-0412, Summary Final Order (April 28, 2008). Therefore, the recall fails when considered a recall by written agreement.

Recall by Homeowner Meeting

Section 720.303(1)(c)1., Fla. Stat. , provides:

If the declaration, articles of incorporation, or bylaws specifically provide, the members may also recall and remove a board director or directors by a vote taken at a meeting. If so provided in the governing documents, a special meeting of the members to recall a director or directors of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

Section 4 of the Association's bylaws provides that any director may be removed from the board, with or without cause, by a majority vote of the total votes held by members of the Association. The governing documents are silent as to the method of the recall. Therefore, the documents do not specifically permit recall by a special meeting of the members. Accordingly, the attempt to recall directors by Homeowner meeting in the instant case was not authorized.

Even if it were assumed that a recall by homeowner meeting was available to the Respondent in this case, the Respondent's attempted recall would fail. The minutes of the board meeting at which the Board considered the recall indicated that the Board, in part, concluded that the recall failed as a recall by homeowners meeting because the notice of the homeowners meeting had not been posted in accordance with state

statutes. The Respondents have not denied this allegation; therefore, the claim is accepted. Accordingly, the recall fails as recall by homeowners meeting.¹

Board Meeting Minutes Specificity

The minutes of the board meeting at which the board chose not to certify the recall indicate that numerous votes were rejected for specific reasons. However, the minutes do not identify the names of the voters or their parcels. Attached to the petition is a spreadsheet that identifies each voter by name and address and stating, if applicable, the reason a vote was rejected. It is not clear whether the spreadsheet was incorporated into the minutes. However, even if it were established that the minutes failed to specifically identify each rejected ballot, such a failure would not save the recall, as the recall fails for the above stated reasons.

Based upon the foregoing, it is ORDERED:

The Association's decision not to certify the recall is affirmed.

DONE AND ORDERED this 20th day of November, 2009, at Tallahassee, Leon County, Florida.

James W. Earl, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Telephone: 850.414.6867
Facsimile: 850.487.0870

¹ Additionally, there is no indication that the recall complied with the requirements of Fla. Admin. Code R. 61B-81.002.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 20th day of November, 2009:

Robert E. Sickles, Esq.
Hinshaw & Culbertson
100 South Ashley Drive, Suite 500
Tampa, FL 33602

Jack Miller, Unit Owner Rep.
819 Lake Biscayne Way
Orlando, FL 32824

James W. Earl, Arbitrator