

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

IN RE: PETITION FOR ARBITRATION

Caudia Richards-Towson,

Petitioner,

v.

**Quail Hollow Condominium
Association, Inc.,**

Respondent.

**Filed with
Arbitration Section**

Case No. 2008-06-5642

AUG 14 2009

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

SUMMARY FINAL ORDER

Procedural History

On December 1, 2008, Caudia Richards-Towson (the petitioner) filed a petition for arbitration naming Quail Hollow Condominium Association, Inc. (the association) as the respondent. The petition contends that Trine Bellen, Luz Ortiz and Javier Urbina should be recalled from the association's board of directors due to written recall agreement. On December 12, 2009, Andres Villegas, President of the association, filed an answer and qualified representative form on behalf of the association.

A case management conference was held in this matter on January 22, 2009. Andres Villegas appeared on behalf of the association and Chandra Parker Doucette, Esq., appeared as counsel for the petitioner. An order was entered on January 27, 2009, memorializing the conference and directing the petitioner to file a reply to the answer to address, without limitation the allegation that the replacement candidates are delinquent in payment of assessments. The petitioner was also directed to provide an account of the composition of the board of directors at the time the association was

served with the recall and subsequent changes including naming the persons appointed to fill the seats vacated by Trine A. Bellen Camos, Luz Ortiz and Javier Urbina. The association was directed to file a response to the petitioner's reply within ten days of the filing of the reply.

On February 3, 2009, the petitioner, via facsimile, filed a brief as to the eligibility of the board members. However, due to technical difficulties, the brief was not received in its entirety.

On February 6, 2009, Mr. Villegas filed a motion alleging the petitioner had not served him with the documentation filed with the arbitrator. On March 12, 2009, Jose A. Fuentes, Esq. filed a letter with the arbitrator requesting the petitioner be required to provide respondent with copies of all documents filed with the arbitrator. On April 9, 2009, Mr. Fuentes filed a notice of appearance on behalf of the association.

A second case management conference was held in this matter on May 14, 2009. During the case management conference the petitioner was directed to re-file her brief and attachments and the association was directed to file a response to it. The petitioner refiled her brief on May 18, 2009, and the association filed a response on May 29, 2009.

Findings of Fact

1. Quail Hollow Condominium Association, Inc. is the corporate entity responsible for the operation of the Quail Hollow Condominium.
2. The association contains 36 voting interests.

3. On November 2, 2008, the association received a written recall agreement consisting of 23 ballots.¹

4. All the ballots sought the recall of Trine Belen², Luz Ortiz and Javier Urbina from the association's board of directors.

5. At the time the association was served with the written recall agreement, the board consisted of Trine A. Belen Campos, Javier Urbina, and Luz Ortiz.

6. On November 3, 2008, Trine A. Belen Campos, Javier Urbina and Luz Ortiz submitted their written resignations from the association's board of directors.

7. The association held a meeting on November 6, 2008, at which time it chose not to certify the recall. The minutes of the meeting list Trine A. Belen Campos, Javier Urbina, Luz Ortiz, Stefania Alvarez, Andres Villegas and Guillermo Alvarez as directors. The Resolution of the Board of Directors attached to the minutes simply states, "The recall ballots are rejected by the Board of Directors of (QHCA)." Neither the resolution nor the minutes state a basis for rejecting the written recall agreement.

8. The association has not filed a petition for recall arbitration.

9. Minutes of a board meeting on November 8, 2008, state that the following appointments were made: Andres Villegas was appointed to Belen Campos' seat, Guillermo Alvarez to Urbina's seat and Stefania Alvarez to Ortiz's seat.

10. The written recall agreement voted for Michael Davila, Felix Quintero and Caudia Richards as replacement candidates.

¹ The petitioner contends that the association received the written recall agreement on November 2, 2009. Since this issue is not material to the determination of this case, this factual dispute does not need to be resolved.

² Because the board meeting minutes refer to her as "Trine A. Belen Campos", this order refers to her as "Trine A. Belen Campos."

11. On February 28, 2008, the association's attorney at the time, Spencer Gollahon wrote the respondent confirming that petitioner was current on her association dues as of January 30, 2008.

12. By check dated November 4, 2008, the petitioner paid the Keith Park's attorney's trust account \$1,351.00 for assessments and late fees due on her property.³

13. By check dated November 4, 2008, Michael Davila paid Mr. Park's attorney's trust account \$763.00 for assessments and late fees due on his property.

14. The petitioner and Mr. Davila's payments were confirmed in an e-mail from Mr. Parks.

15. As of the date this order, the Florida Department of State Division of Corporations' website⁴ lists the following directors:

- a. Andres A. Villegas, President
- b. Guillermo Alvarez, Vice President
- c. Stefania Alvarez, Treasurer

Conclusions of Law

The undersigned has jurisdiction over the parties and subject matter of this dispute, pursuant to sections 718.112(2)(j)3. and 718.1255, Florida Statutes. In accordance with section 718.112(2)(j)3., Florida Statutes, the unit owners voting in favor of the recall are the Respondent in this matter.

The association held a meeting on November 6, 2008, at which time it chose not to certify the recall. The Resolution of the Board of Directors attached to the minutes simply states, "The recall ballots are rejected by the Board of Directors of (QHCA)."

³ At this time Keith H. Park was the association's attorney. By letter dated November 6, 2008, the association terminated Mr. Park's services.

⁴ The undersigned hereby takes official notice of this information.

Neither the resolution nor the minutes state a basis for rejecting the written recall agreement. The association has not filed a petition for recall arbitration.

Section 718.112(2)(j)3., Fla. Stat., and rule 61B-50.105(1)(b), Fla. Admin. Code, provide that where the board determines not to certify a recall, within five full business days after the meeting, the board shall file a petition for arbitration with the Division. Rule 61B-50.105(1)(c), Fla. Admin. Code, requires certification of recall where the association fails to timely file a petition.

The rule provides that the time limits are subject to equitable considerations and that the arbitrator may consider legitimate justifications for failure to comply providing that any delay was based in good faith. At the case management conference held on January 22, 2009, Mr. Villegas, the association's representative at the time, stated that the association had failed to file a petition for arbitration because it was involved in other litigation. Apparently, the litigation, at least in part, involved the petitioner. Mr. Villegas' explanation does not justify the association's failure to file a petition. Since the recall appears valid on its face it should be certified.⁵

The association's answer states various reasons for rejecting the recall not stated in the minutes of the meeting at which the recall was rejected. Pursuant to rule 61B-50.105(5)(h), Fla. Admin. Code, a reason that is not specifically stated in the minutes may not be considered by the arbitrator.

The association also contends that the recall was obtained through misrepresentation. Rule 61B-105(5)(h), Fla. Admin. Code, states that the fact that a

⁵ A majority of voting interests may recall a board member. Of the 36 voting interests, 23 voted in favor of the recall. Therefore, there are enough votes on the face of the written recall agreement to recall the above-named directors.

unit owner may have received misinformation is not a valid basis for rejecting a recall and shall not be considered by the arbitrator.

The association contends that the recall dispute is moot because the board members subject to recall resigned. The association has provided notices of resignation that state that the board members resigned after the association received the written recall agreement. Rule 61B-23.0028(5)(b), Fla. Admin. Code, provides, that after service of a written agreement on the board and the board determines not to certify the recall of a director and that director resigns, any appointment to fill the resulting vacancy shall be temporary pending the arbitration decision.

At the earliest, Trine A. Belen Campos, Javier Urbina and Luz Ortiz resigned from the association's board of directors on November 3, 2008. However, the minutes for the November 6, 2008, board meeting to consider the recall still listed them as board members. Additionally, their replacements were not appointed until a board meeting held on November 8, 2008. Therefore, the persons appointed to fill the seats vacated by the directors subject the recall should be removed.

At the November 8, 2008, board meeting Andres Villegas was appointed to Belen Campos' seat, Guillermo Alvarez to Urbina's seat and Setfania Alvarez to Ortiz's seat. As of the date of this order, Andres Villegas, Guillermo Alvarez and Stefania Alvarez are the only directors listed for the association on the Florida Department of State, Division of Corporations' website. They are removed from the board. If they are no longer serving on the board, whoever was appointed to fill their seats is removed.

The parties agreed during the case management conference held on January 22, 2009, that the board consists of five seats. Where a majority of the board has been

recalled, in accordance with § 718.112(2)(j)5., Fla. Stat., and Fla. Admin. Code R. 61B-23.0028, replacement board members elected by the written recall agreement typically take office. However, the association has alleged that all of the replacement candidates are more than 90 days delinquent in the payment of assessments and; therefore, are ineligible to serve on the board. The petitioner has denied this allegation.

Section 718.112(2)(n), Fla. Stat, states,

Director or officer delinquencies.--A director or officer more than 90 days delinquent in the payment of regular assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

On December 17, 2008, the association recorded a claim of lien in the public records for Palm Beach County, Florida against the petitioner's unit for unpaid assessments due. On January 30, 2009, the association filed a foreclosure action (case no. 2009CA003304) in the Fifteenth Judicial Circuit, in Palm Beach, Florida. On February 2, 2009, the petitioner recorded a Notice of Contest of Lien in the public records disputing the claim of lien filed by the association.

On December 17, 2008, the association recorded a claim of lien in the public records for Palm Beach County, Florida against Michael Davila's unit for unpaid assessments. On February 2, 2009, a Mr. Davila filed a Notice of Contest of Lien in the public records disputing the claim of lien filed by the association.

Based upon the evidence filed in this case, it is clear that there is a legitimate dispute regarding the assessments owed to the association by the petitioner and Mr. Davila. In order to rule upon the association's claim that the petitioner and Mr. Davila are ineligible to serve on the board pursuant to § 718.112(2)(n), Fla. Stat., due to unpaid regular assessments, the undersigned must determine the propriety of the

assessments. Additionally, the petitioner claims that she and Mr. Davila satisfied the delinquent assessments.⁶ The association denies this claim. Therefore, the undersigned would also have to rule upon whether the assessments have been properly satisfied. Pursuant § 718.1255(1), Fla. Stat., a dispute that primarily involves the levy or collection of an assessment is not within the arbitrator's jurisdiction. Therefore, since the petitioner and Mr. Davila have filed sufficient evidence disputing the association's claim that they have failed to pay their assessments, the undersigned finds it appropriate to defer to the will of the membership and seat them as replacement candidates. Any dispute regarding assessments should be decided by a court of competent jurisdiction.⁷

The petitioner has not presented any evidence that would create a disputed issue of material fact regarding the association's claim that Mr. Quintero is ineligible to serve on the board pursuant § 718.112(2)(n), Fla. Stat. Therefore, the undersigned does not find it appropriate to seat Mr. Quintero.

The association has alleged that the written recall agreement was improperly served on it. The petitioner has alleged that the association failed to hold a board meeting to consider the recall in a timely fashion. Neither of these disputes need to be resolved as they are not determinative in this matter. It is clear that the association received the recall agreement and held a meeting. However, as found above, the association's failure to file a petition for recall arbitration, and the deficiencies in the

⁶ As stated in the findings of fact, the petitioner and Mr. Davila have submitted cancelled checks and correspondence from the association's former attorneys in support of their argument.

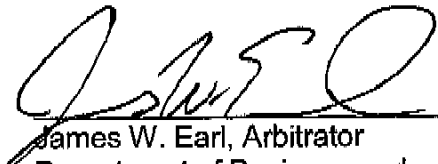
⁷ The undersigned further finds it inappropriate to entertain the association's assessment claim against the petitioner while the association's foreclosure action is pending in the circuit court because the court case is based, at least in part, upon the lien for the alleged unpaid assessments. See *Cooper v. Kensington Walk Master Assoc. and Kensington Walk Condominium Two Association*, Arb. Case No. 2004-00-8633, Order Vacating Final Order Determining Jurisdiction and Final Order of Dismissal (March 30, 2004).

minutes of the board meeting to consider the recall, merit certification of the recall. The association has also asserted numerous arguments against certification of the recall that do not merit consideration in this order and are rejected.

Based upon the foregoing, it is ORDERED:

1. The recall in this matter is certified.
2. If Andres Villegas, Guillermo Alvarez and Stefania Alvarez are currently serving on the board, they are removed from the board of directors effective upon the date of the mailing of this order. Anyone who was appointed to fill a seat occupied by Trine A. Belen Campos (aka Trine Belen), Luz Ortiz and Javier Urbina, is likewise removed effective upon the date of the mailing of this order.
3. The removed board members shall, within five days of the date this order, return all association records and property in their possession to the board.
4. Caudia Richards-Towson and Michael Davila shall take office immediately and shall fill two of the vacancies caused by the recall for the unexpired term of the seats each assumes.
5. Caudia Richards-Towson, Michael Davila, and any remaining board members who have not been removed by this order shall appoint a replacement director to fill the remaining vacancy caused by this recall.
6. Should Caudia Richard-Towson and Michael Davila be the only directors at the time they take office, they may fill the remaining vacancy caused by this recall and other vacancies in accordance with § 718.111(2)(d)8., Fla. Stat.

DONE AND ORDERED this 14th day of August, 2009, at Tallahassee, Leon County, Florida:



James W. Earl, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
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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 14th day of August, 2009:

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James W. Earl, Arbitrator

⁸ It is unclear whether Mr. Fuentes or Villegas is presently representing the association.