

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

IN RE: PETITION FOR RECALL ARBITRATION

AQUARIUS CONDOMINIUM
ASSOCIATION, INC.,

Filed with
Arbitration Section

JUL 21 2015

Petitioner,

v.

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

Case No. 2015-02-6963

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

SUMMARY FINAL ORDER

Relevant Procedural History

On June 11, 2015, Aquarius Condominium Association, Inc. (the Association) filed a petition for recall arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes. The petition seeks to affirm the decision of the Association's board of directors not to certify the recall of the following board members: John Youssef and Joel Cohen.

On June 18, 2015, the arbitrator entered an order requiring answer to petition for recall arbitration. On June 25, 2015, Respondent filed a motion for summary disposition. On July 6, 2015, the Association responded to Respondent's motion for summary disposition. On July 9, 2015, a case management conference was held. On July 17, 2015, the Association complied with the order after case management conference.

Findings of Fact

1. The total number of voting interests in the Association is 269. The board of directors consists of five members. To recall a board member, 135 valid ballots voting in favor of recall are needed.

2. On June 1, 2015 at 2:10 p.m., the Association received by personal service, a written recall agreement containing 145 written ballots. The directors sought to be recalled and the corresponding number of ballots as to each are:

John Youssef	141
Joel Cohen	143

3. The written recall ballots served on the board utilized the standard form available from the Division.

4. On June 9, 2015, the board of directors held a meeting at which the board voted not to certify the recall.

5. June 1, 2015 was a Monday. June 9, 2015 was a Tuesday. Excluding Saturday and Sunday, the meeting was held six (6) days from the service of the recall.

6. Section 683.01(l), Florida Statutes, designates June 3 to be a "legal holiday" as recognition of the birthday of Jefferson Davis.

7. The Association has filed affidavits from board members, Linda Satz, John Youssef and John Cohen, along with the affidavit of the Association's community association manager (CAM), Anthony Surdovel.¹ All the affidavits state in pertinent part the following identical testimony:

In the coordinating of the scheduling for the Board of Directors Meeting to consider the Written Recall Agreement, I reviewed §718.112(2)(j)(2), Florida Statutes. I was unaware of the existence of Chapter 61B-50,

¹ For the purposes of determining whether this case is appropriate for summary disposition, the statements in the affidavits are presumed to be true.

Florida Administrative Code and interpreted 'business days' to exclude legal holidays. I was under the impression that legal holidays meant the plain meaning given to it pursuant to §683.01(l), Florida Statutes.

Conclusions of Law

The arbitrator has jurisdiction of the parties and the subject matter of this dispute pursuant to Sections 718.112(2)(j) and 718.1255, Florida Statutes. A Summary Final Order is appropriate in this case pursuant to Rule 61B-50.119(3), Florida Administrative Code.

Section 718.112(2)(j)2., Florida Statutes, states, "The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing." Furthermore, Section 718.112(2)(j)4., Florida Statutes, provides:

If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

Rule 61B-23.0028(8), Florida Administrative Code, states:

(8) Computation of Five Full Business Days. In computing the five full business days prescribed by Section 718.112(2)(j), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. Intervening days which are a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, or as that section may subsequently be renumbered, shall not be included. The last day of the period which is not a Saturday, Sunday, or legal holiday as designated in Section 110.117, Florida Statutes, shall be included.

(emphasis supplied). Additionally Rule 61B-50.106(1), Florida Administrative Code further states:

(1) In computing the five full business days prescribed by Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, and these rules, the day of the act from which the period of time begins to run shall not be included. The

last day of the period shall be included unless it is a Saturday, Sunday or legal holiday as prescribed by Section 110.117, Florida Statutes, in which event the period shall run until the end of the next business day.

(emphasis supplied).

Section 110.117, Florida Statutes, does not designate June 3 (or any dates between June 1 and June 9) as a legal holiday. Therefore, under the statute and rules for written recalls, the last day the Association should have had its meeting regarding the recall was June 8, 2015. The Association's meeting on June 9, 2015, was one day late.

However, Rule Section 61B-50.105(2) states:

(2) The time periods contained in Sections 718.112(2)(j) and 719.106(1)(f), Florida Statutes, operate, for purposes of these arbitration rules and not for enforcement purposes under Section 718.501, Florida Statutes, in the manner of statutes of limitation and are therefore subject to equitable considerations. However, where the board fails to timely comply with these rules relating to the filing of the petition for recall arbitration, the board must provide legitimate justification and must demonstrate that its actions or inactions were taken or based in good faith. The board's claims of excusable neglect or the inability to identify defects in the recall effort within the time provided, or other unremarkable excuses will not be considered as proper defenses. The failure of an association to timely file a petition for recall arbitration within the time limits imposed under these rules or Chapters 718 and 719, Florida Statutes, will result in the certification of the recall and the immediate removal of the board members subject to recall; however, the failure of the association to timely file a petition for recall arbitration will not validate a written recall that is otherwise void at the outset for failing to obtain a majority of the voting interests or is deemed fatally defective for failing to substantially comply with the provisions of Rule 61B-23.0028, Florida Administrative Code.

(emphasis supplied). The three board members and the Association's CAM aver that they were unaware of the Florida Administrative Code, and they in good faith referred to Section 683.01(l) instead of Section 110.117 for the proper designation of legal holidays. The Association alleges that this confusion entitles it to the equitable considerations provided for in Rule 61B-50.105(2).

However, in Florida, condominium board members are required to comply with Section 718.112(2)(d)4.b., Florida Statutes, which states in pertinent part:

Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment.

The educational curriculum instructs board members on the Florida Administrative Code.² If the Association board members decided to educate themselves rather than complete the education curriculum, they did so at their own peril.³ The Board members' ignorance of the Florida Administrative Code will not excuse them from complying with the meeting requirements of the recall statutes and administrative code.

In most cases, failure of the association to comply with the meeting requirements of Section 718.112(2)(j)2., Florida Statutes, results in certification of the recall. *Sunrise Towne Preferred Condo. Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case 01-2517, Final Order On Recall (April 12, 2001). The only exception is where the recall agreement is void at the outset because it is fatally flawed in the form of the agreement or where, on its face, it is clear that the agreement has not been approved by a majority of the voting

² Information on how to locate a division-approved curriculum provider can be found at: <http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>

³ Because the board members' affidavits are assumed to be true, then the arbitrator concludes that the board members could not have successfully completed the educational curriculum.

interests. *Id.* In the instant case, the written recall includes enough facially valid ballots to recall both John Youssef and Joel Cohen.

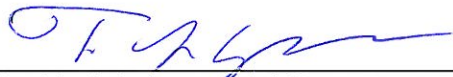
Based on the foregoing, it is ORDERED:

1. The recall of board members John Youssef and Joel Cohen is hereby CERTIFIED, and they are REMOVED as directors effective as of the date of the mailing of this Order.

2. As less than a majority has been recalled, pursuant to Rule 61B-23.0028(3)2., Florida Administrative Code, the vacancies on the board may be filled by the affirmative vote of a majority of the remaining board members, subject to the provisions of Section 718.301, Florida Statutes, and Rules 61B-23.003 and 61B-23.0026, Florida Administrative Code, regardless of whether the authority to fill vacancies in this manner is provided in the condominium documents. A board member appointed pursuant to this rule shall fill the vacancy for the unexpired term of the seat being filled. No recalled board member shall be appointed by the board to fill any vacancy on the board.

3. Within five full business days from the effective date of this recall, John Youssef and Joel Cohen shall deliver to the board any and all records of the Association in their possession.

DONE AND ORDERED this 21st day of July, 2014, at Tallahassee, Leon County, Florida.



Terri Leigh Jones, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Phone: (850) 414-6867/ Fax: (850) 487-0870

Certificate of Service

I hereby certify that a copy of the foregoing summary final order has been sent by

U.S. mail and facsimile to the following persons on this 21st day of July, 2015:

Russell M. Robbins, Esq.
Mirza Basulto & Robbins, LLP
14160 NW 77th Court
Suite 22
Miami Lakes, FL 33016-1506
Fax: 305-722-8901
Attorney for the Association

Eric M. Glazer, Esq.
Glazer & Associates, P.A.
3113 Stirling Road, Suite 201
Fort Lauderdale, FL 33312
Fax: 954-333-3983
Attorney for Respondent



Terri Leigh Jones

TRANSMISSION VERIFICATION REPORT

TIME : 07/21/2015 09:52
NAME : DBPR ARBITRATION
FAX : 8504870870
TEL : 8504146867
SER. # : 000H4V577050

DATE, TIME 07/21 09:48
FAX NO./NAME 619543333983
DURATION 00:03:12
PAGE(S) 07
COVERPAGE
RESULT OK
CHECK READABILITY OF TRANSMITTED PAGE(S) 01, 02, 03, 04, 05, 06, 07
COVERPAGE
MODE STANDARD

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

IN RE: PETITION FOR RECALL ARBITRATION

AQUARIUS CONDOMINIUM
ASSOCIATION, INC.,

Filed with
Arbitration Section

JUL 21 2015

Petitioner,

v.

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

Case No. 2015-02-6963

UNIT OWNERS VOTING FOR RECALL,

Respondent.

SUMMARY FINAL ORDER

Relevant Procedural History

On June 11, 2015, Aquarius Condominium Association, Inc. (the Association) filed a petition for recall arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes. The petition seeks to affirm the decision of the Association's board of directors not to certify the recall of the following board members: John Youssef and Joel Cohen.

Log for
Division Of Florida Condos
8509215446
7/21/2015 11:49AM

Last Transaction

Date	Time	Type	Identification	Duration	Pages	Result
07/21	11:47a	Fax Sent	613057228901	0:38	1	Error 346*

* A communication error occurred during the transaction. Try again.
If you're sending, try again and/or call to make sure the recipient's
fax machine is ready to receive faxes. If you're receiving, contact
the initiator and ask them to send the document again.

TRANSMISSION VERIFICATION REPORT

TIME : 07/21/2015 10:55
NAME : DBPR ARBITRATION
FAX : 8504870870
TEL : 8504146867
SER. # : 000H4V577050

DATE, TIME	07/21 10:54
FAX NO./NAME	613057228901
DURATION	00:00:25
PAGE(S)	00
RESULT	COVERPAGE
MODE	NG
	STANDARD

NG: POOR LINE CONDITION

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

IN RE: PETITION FOR RECALL ARBITRATION

**AQUARIUS CONDOMINIUM
ASSOCIATION, INC.,**

Filed with
Arbitration Section

JUL 21 2015

Petitioner,

v.

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

Case No. 2015-02-6963

UNIT OWNERS VOTING FOR RECALL,

Respondent.

SUMMARY FINAL ORDER

Relevant Procedural History

On June 11, 2015, Aquarius Condominium Association, Inc. (the Association) filed a petition for recall arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes. The petition seeks to affirm the decision of the Association's board of directors not to certify the recall of the following board members: John Youssef and Joel Cohen.

On June 18, 2015, the arbitrator entered an order requiring answer to petition for

TRANSMISSION VERIFICATION REPORT

TIME : 07/21/2015 09:54
NAME : DBPR ARBITRATION
FAX : 8504870870
TEL : 8504146867
SER.# : 000H4V577050

DATE, TIME	07/21 09:53
FAX NO./NAME	613057228901
DURATION	00:00:25
PAGE(S)	00
RESULT	COVERPAGE
MODE	NG
	STANDARD

NG: POOR LINE CONDITION

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

IN RE: PETITION FOR RECALL ARBITRATION

**AQUARIUS CONDOMINIUM
ASSOCIATION, INC.,**

Filed with
Arbitration Section

JUL 21 2015

Petitioner,

v.

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

Case No. 2015-02-6963

UNIT OWNERS VOTING FOR RECALL,

Respondent.

SUMMARY FINAL ORDER

Relevant Procedural History

On June 11, 2015, Aquarius Condominium Association, Inc. (the Association) filed a petition for recall arbitration with the Division of Florida Condominiums, Timeshares and Mobile Homes. The petition seeks to affirm the decision of the Association's board of directors not to certify the recall of the following board members: John Youssef and Joel Cohen.

On June 18, 2015, the arbitrator entered an order requiring answer to petition for