

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

**IN RE: PETITION FOR ARBITRATION**

**Les Chateaux at International Gardens  
Condominium Association, Inc.,**

**Petitioner,**

**v.**

**Case No. 2006-02-2607**

**Unit Owners Voting for Recall,**

**Respondent.**

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**FINAL ORDER**

On July 17, 2006, a final hearing was held in the above-styled case to resolve disputed issues of fact surrounding annual election and meeting held by the Les Chateaux at International Gardens Condominium Association, Inc., ("Association") and its effect on this recall proceeding.

**Appearances**

For Petitioner: Edoardo Meloni, Esquire  
Fein & Meloni, Esqs.  
900 S.W. 40<sup>th</sup> Avenue  
Plantation, Florida 33317

For Respondent: David C. Arnold, Esquire  
8301 S.W. 164<sup>th</sup> Street  
Palmetto Bay, Florida 33157-3540

The parties presented testimony and submitted numerous exhibits into evidence. This final order is entered after consideration of the entire record in this case.

**Statement of the Issues**

The primary issues for determination in this case are as follows: (1) whether the Association's Board of Directors ("Board") should have certified the recall agreement served on April 12, 2006, and if so, (2) whether the recall proceeding was rendered moot by the annual meeting and election held on May 10, 2006.

### **Procedural History**

The Association filed a petition for recall arbitration on April 26, 2006, alleging that the board was served on April 12, 2006 with the Respondent's written recall agreement consisting of 214 ballots for the recall of the Association's entire five-member board of directors. The ballots listed Marta Gonzalez, Kelly Cyrus, Claudia Rodriguez, Richard Lima and Yasmin Perez as the directors who were the subjects of the recall.

The Association claims to have held a recall meeting on April 19, 2006, during which the Association rejected 81 ballots for various reasons and declined to certify the recall. One basis for the Association's non-certification of the recall was that Marta Gonzalez, Kelly Cyrus, Claudia Rodriguez and Yasmin Perez were no longer board members at the time the written recall agreement was served. According to the Association, these four board members resigned from the board prior to service of the recall agreement, and Yolanda Figueroa and Enrique Uribarri were serving as replacement board members at the time the board was served with the recall agreement. Another basis for the Association's non-certification of the recall was the Board's finding that four of the recall ballots were signed by persons without voting privileges in the Association.

On May 9, 2006, the Respondent, comprised collectively of those unit owners who had voted in favor of the recall, answered the petition denying that the four Board members referenced in the petition were no longer on the Board and asserting that the Board had failed to hold a recall Board meeting on April 19, 2006. The Respondent further asserted that the Board failed to notice any meeting at which the alleged replacement directors Yolanda Figueroa and Enrique Uribarri were appointed, and therefore these appointments were invalid.

On May 9, 2006, the Respondent moved for emergency injunctive relief, seeking an order prohibiting the Association from conducting an election on May 10, 2006, alleging that the unit owners had not been given proper notice of the election, and the Association's by-laws required the Association to hold its annual meeting and election during the month of December. On May 15, 2006, an order was issued which denied the Respondent's motion for an emergency injunction as moot. The arbitrator ordered the Association to supplement its petition with documentation supporting its claims that the election was valid, that four Board members had actually resigned, and that the Board had properly appointed replacement directors. The Association filed supplemental information on May 26, 2006.

On June 16, 2006, the arbitrator notified the parties that a hearing would be held on the issue of whether the recall proceeding had been rendered moot by the alleged occurrence of an annual election. The final hearing took place on July 17, 2006. This final order is entered after consideration of the testimony and exhibits produced at the hearing.

### **Findings of Fact**

1. There are 273 voting interests in the Association, and 137 valid ballots are needed to recall a board member.
2. The Association's rejection of four recall ballots was improper, as the warranty deeds produced by the Respondent prove that the four unit owners in question were voting members of the Association.
3. The recall agreement served on April 12, 2006, was supported by a majority of the Association's voting members.
4. The existence of two conflicting copies of May 2005 annual meeting minutes calls into question the reliability of the Association's records in general, as does the lack of any notice of the meeting purportedly held in January of 2006 during which Ms. Figueroa was supposedly appointed to serve as a replacement director. Further evidence calling into question the reliability of the Association's records is Mr. Lima's inability to recall who was serving as a director prior to service of the recall. Accordingly, the arbitrator finds that the Association's records as to who was serving as a Board member at the time of service of the written recall are unreliable.
5. The undersigned finds that at the time the recall agreement was served on April 12, 2006, the Association's Board consisted of Richard Lima, Claudia Rodriguez and Marta Gonzalez and these directors are subject to the written recall agreement.
6. Based on the testimony received, and taking into account the demeanor and credibility of the opposing witnesses, the arbitrator finds that the Association did not provide written notice of the May 10, 2006 election to its members as required by section 718.112(2)(d)3, Florida Statutes.

### **Conclusions of Law**

1. The division has jurisdiction of this matter pursuant to sections 718.112(2)(j) and 718.1255, Florida Statutes.

2. Section 718.112(2)(j), Florida Statutes, permits a majority of the total voting interests to recall a Board member or members for cause or not for cause. This statutory entitlement cannot be compromised by artifice or by the manipulation of Association records or processes.

3. In this case, a majority of unit owner votes were obtained to recall the Board; therefore, the written recall agreement should have been certified by the Association as to Richard Lima, Marta Gonzalez and Claudia Rodriguez.

4. The Association violated section 718.112(2)(d)3., Florida Statutes, by failing to provide the first notice of election at least 60 days before the scheduled May 10, 2006 election.

5. The Association's annual meeting and election held on May 10, 2006, failed to meet the requirements of section 718.112(2)(d)3, Florida Statutes and is therefore null and void.

6. This recall proceeding has not been rendered moot, based on the arbitrator's finding that the May 10, 2006 annual meeting and election is null and void.

It is therefore ORDERED:

1. The recall of Richard Lima, Marta Gonzalez and Claudia Rodriguez is certified, effective immediately.

2. The recalled Board members shall return any and all association records in their possession within five (5) full business days of the mailing of this final order.

3. Replacement candidates Dorothy Perez, Raul Montserrat and Miguel Rizo, listed as replacement Board members in the recall instruments, shall assume the recalled Board members' seats immediately, and shall fill the remaining vacant seats on the Board in accordance with rule 61B-23.0028, Florida Administrative Code. Thereafter, the newly seated Board shall ensure that a properly noticed annual meeting and election is conducted in December of 2006, in accordance with the Association's governing documents.

DATED this 25th day of August 2006, at Tallahassee, Leon County, Florida.

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Catherine Bembry, Arbitrator  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1029

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile and U.S. Mail, postage prepaid, to the following persons, on this 25th day of August, 2006:

Edoardo Meloni, Esquire  
Fein & Meloni, Esqs.  
900 S.W. 40<sup>th</sup> Avenue  
Plantation, Florida 33317

David C. Arnold, Esquire  
8301 S.W. 164<sup>th</sup> Street  
Palmetto Bay, Florida 33157-3540