

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

IN RE: PETITION FOR ARBITRATION

**West Garden Village
Condominium Association, Inc.,**

Petitioner,

vs.

Case No. 2006-02-2054

Unit Owners Voting For Recall,

Respondent.

AMENDED FINAL ORDER

This amended final order is entered after entry of the final order in this matter on Friday, June 9, 2006, on the petition for recall arbitration filed by the petitioner (the association) on April 20, 2006. As each of the parties were advised at the close of the final hearing, this amended order is being issued to incorporate those oral findings and conclusions as to the number of ballots contained within the written recall agreement subject to this dispute, as well as the arbitrator's findings as to the validity of those ballots noted in the final order of June 9, 2006.

The association was represented by Jorge Rodriguez-Chomat, Esquire, and the respondent was represented by Alberto Sabucedo, the designated unit owner representative.

1/35

West Garden Village Condominium Association, Inc., consists of 64 total voting interests, therefore a total of 33 votes are necessary to recall a board member. The written recall agreement which is the subject of the petition for recall arbitration filed in this case was served on the association on April 10, 2006, and the board held a meeting during which it determined not to certify the written recall agreement on April 13, 2006. The board members who were subject to the recall are Cecilia More, Elsa Saiz, Ana Luaces, and Maria Peterson.¹ The written recall ballots that were served on the board listed Sergio L. More, Elsa Saiz, Ana Luaces and Maria Peterson as the board members subject to recall. The ballots also listed as replacement candidates Alberto Sabucedo, Victor Simon, George Sola, Melvin Quiroz and Rosanna Fernandez.

The association's petition alleged that the board determined not to certify the recall for the following reasons:

1. Units 690-102, 660-204, 690-102 and 680-103 were owned by multiple owners for which there was no voting certificate on file with the association;
2. The ballots for unit nos. 690-107 and 690-103 were signed by persons other than the unit owners.

At the final hearing, the association presented the testimony of its property

¹ Apparently all members of the board resigned prior to the recall with the exception of Cecilia More, Elsa Saiz, and Ana Luaces.

manager, Barbara Blanco. Ms. Blanco testified that she received the respondent's recall package at the property management office and that she had copied the recall ballots and forwarded a copy to the association's attorney. She was unable to verify the number of written recall ballots that were in the envelope that she received in her office, however, the ballots produced by the respondent at the final hearing reflected that 35 ballots were sent to the property management office.²

The association initially rejected certain ballots because there was no voting certificate for the unit owners signing the ballots on file with association. However, the association failed to produce any evidence that it had actively enforced the association's voting certificate requirement in past voting instances. Where an association's board rejects recall ballots for failure to comply with voting certificate requirements, the board must demonstrate that voting certificate requirements have been enforced in the past. *Celebrity Point Condo. Assoc., Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2003-08-0616, Summary Final Order (November 5, 2003). Because the association could not establish that it had actively enforced the voting certificate requirement in the past, those ballots that were rejected for this reason are considered valid.

The association also rejected the ballots for units 690-107 and 690-103 because these ballots were allegedly signed by persons other than the unit owners. However, the respondent presented the testimony of the unit owners for these two

² The respondent admits to voluntarily removing one ballot from the recall package because the unit owner sold her unit. Therefore, a total of 35 ballots were available for the board's review.

units who confirmed that they did sign the ballots that were served on the board. Thus, the association improperly rejected these two ballots.

The ballots for units 660-204 and 690-102, were not valid, as the ballot for unit 690-102 did not contain the proper signatures at the time the ballot was served on the board, and unit 660-204, which is owned in trust, was signed by the beneficiary instead of the trustee or another person authorized to vote on behalf of the trust. Therefore, the board properly rejected these two ballots.

Based on the evidence presented by the parties at final hearing, the undersigned finds that the board members subject to the recall were Cecilia More, Elsa Saiz, and Ana Luaces. A total of thirty-five ballots were served on the board and all ballots were valid with the exception of the ballots for unit numbers 660-204 and 690-102, which were properly rejected by the board. Because a majority of the voting interests was obtained by the unit owners voting for recall, the association's decision not to certify the written recall agreement is not affirmed.

It is therefore ORDERED that:

- 1) The recall of board member(s) Cecilia More, Elsa Saiz and Ana Luaces is effective as of June 9, 2006.³
- 2) A majority of the association's board was recalled by the written recall agreement, therefore, the following replacement candidates shall immediately assume the vacant seats on the board of directors: Alberto

³ Any recalled board member is required to return all association records in his or her possession within five (5) days of the date of this order.

Sabucedo, Victor Simon, George Sola, Melvin Quiroz and Rosanna Fernandez.

DONE AND ORDERED this 28th day of June, 2006, at Tallahassee, Leon County, Florida.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Final Order was provided to the following persons, on this 28th day of June, 2006.

Jorge Rodriguez-Chomat, Esquire
825 Brickell Bay Drive, Ste. 1750
Miami, Florida 33131

Alberto Sabucedo
690 West Park Drive, #208
Miami, Florida 33172

Catherine Bembry, Arbitrator