

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

IN RE: PETITION FOR CONDOMINIUM ARBITRATION – RECALL DISPUTE

ALEKSEY KULICHENKO,
Unit Owner Representative,

Petitioner,

v.

Arb. Case No. 2024-07-0662

CYPRESS BEND CONDOMINIUM I,
ASSOCIATION, INC.,

Filed with
Arbitration Section

Respondent.

FEB - 6 2025

SUMMARY FINAL ORDER

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

Procedural History

On October 28, 2024, the Association held a meeting to consider the recall of several members of the board of directors. At this meeting the board rejected over 100 of the 213 recall ballots served on it. On December 11, 2024, Petitioner filed a petition for non-binding arbitration concerning the Association's decision not to certify the recall. On December 16, 2024, the arbitrator entered an Order Requiring Answer, Filing of Recall Meeting Minutes and Recording and Setting Case Management Conference (1/21/25 @ 10:00 a.m.) ("Order Requiring"). On January 13, 2025, the Association filed a Motion to Dismiss which was denied on January 17, 2025. The Association filed its Answer on January 24, 2025. Case management conferences were held on January 28, and February 5, 2025, with counsel for both parties present. The issues in the case were discussed at both case management conferences.

Findings of Fact

1. Petitioner Aleksey Kulichenko, the unit owner representative, I the owner of a unit within the Association.

2. The Association is the corporate entity responsible for the operation of the Cypress Bend Condominium I, Association, Inc. ("Association")

3. The Association consists of a total of 380 voting units. A total of 191 valid recall ballots are necessary to recall a director.

4. On October 21, 2024, Petitioner served the Association with a total of 213 ballots to recall seven members of the board of Directors. The directors' subject to recall are: Wendy Elder, Annette Pelletier, Wayne Behnken, Derek Fueling, Sharon Frank, James Dwyen and Pablo Villalba.

5. On October 28, 2024, the board held the meeting required by section 718.112(2)(l)2., Florida Statutes. The board did not certify the recall at this meeting because it disqualified a total of 127 recall ballots leaving 86 facially valid ballots.¹ These 127 ballots were disqualified for the following reasons:

a. Ten (10) ballots were disqualified because the owners rescinded their recall votes prior to service of the recall on the Association.

b. Sixty-one (61) ballots were disqualified because they had electronically affixed signatures.

c. Two (2) ballots were not signed by the owner of the unit.

d. Fifty-four (54) ballots were disqualified as being "pre-marked."

¹ The Association attached a chart to its' answer that identifies by category the ballots it disqualified.

Conclusion of Law

The arbitrator has jurisdiction over the parties and the subject matter of this dispute pursuant to Sections 718.112(2)(j)4 and 718.1255, Fla. Stat. A Summary Final Order is appropriate in this case pursuant to Rule 61 B-45.030(3), Florida Administrative Code ("F.A.C."), which provides:

At any time after the filing of the answer, and if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief if the arbitrator finds no meritorious defense exists, and that the petition is otherwise appropriate for relief.

Section 718.112(2)(j)4, Florida Statutes, provides:

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the recall is not facially valid, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

[Emphasis added.]

In *Swint v. Flamingo South Beach I Condominium Association, Inc.*, Arb. Case No. 2021-03-1388, Summary Final Order (November 18, 2021) the arbitrator noted

The Arbitrator is limited to a review of the facial validity of the ballots filed. This arbitrator may only reject an individual ballot for obvious defects within the document itself which render the individual ballot facially invalid and is limited to looking within the four corners of the ballots. *Thomas Shorrock v. Knollwood Homeowners' Association, Inc.*, Arb. Case No. 2019-02-8857, Summary Final Order (July 24, 2019) (citing *Westbrook Estates Homeowners Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Case 2010-03-2663, Summary Final Order (July 22, 2010)); *Sun Isle Condominium Ass'n. of Merritt Island, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2008-05-2748, Summary Final Order (October 31, 2008). Addressing the reasons for rejection of the ballots asserted by the Association requires the Arbitrator to look outside of the four corners of the ballots and cannot be considered. See, *Sun Isle Condominium Ass'n. of Merritt Island, Inc. v. Unit*

Owners Voting for Recall, Arb. Case No. 2008-05-2748, Summary Final Order (October 31, 2008), and *Nicastro v. Nomi Condo. Ass'n, Inc.* Arb. Case No. 2019-03-8572, Summary Final Order (February 26, 2020).

Arbitration decisions have narrowly construed what makes a ballot facially invalid. For such determination, the arbitrator's review is limited to a defect within the four corners of the ballot itself and must not consider extrinsic evidence. See, e.g. *Rivera v. Bayshore Yacht and Tennis Club Condominium Ass'n, Inc.*, Arb. Case No. 2019-03-0374, Summary Final Order (Sept. 25, 2019). Examples of facial invalidity include where (1) the votes on the recall ballots were pre-marked; (2) the recall ballot did not provide an opportunity for the voter to cast a vote individually to recall or retain, each board member targeted for recall, (3) the ballot did not contain a signature; and (4) there are no markings on a ballot indicating that the unit owner voted to recall or retain a board member, *i.e.*, where no check is in the box next to the board member's name. In each of these instances, an arbitrator can conclude that a ballot is facially invalid without resorting to extrinsic evidence.

In the present case the arbitrator has examined the one-hundred fifteen (115) ballots that the Association rejected based on an assertion that said ballots were either pre-marked or contain an electronically affixed signature. Based on a review of these rejected ballots as provided for by *Swint, supra*, the arbitrator can find no evidence of pre-marking or an electronically affixed signature. When these one-hundred fifteen (115) ballots are added to the eighty-six (86) ballots that the Association has conceded as being facially valid, the number of facially valid ballots totals two hundred one (201) ballots. As only one hundred ninety-one (191) ballots are necessary to certify the recall, it is

ORDERED:

1. The recall of directors Wendy Elder, Annette Pelletier, Wayne Behnken, Derek Fueling, Sharon Frank, James Dwyen and Pablo Villalba is CERTIFIED, and they are removed from the board of directors effective IMMEDIATELY. Said directors shall return all Association official records and property, if any, to the Association within ten (10) days of the date of this order.

2. Nella Quintieri, Laszlo Sandor, Gabriela Rolon, Angela Constabile, Traci Lee Pina, Jordan Young and Nancy Thomas, are installed as directors of the Association effective IMMEDIATELY. Said replacement directors shall serve for the remainder of the terms of the directors that have been recalled.

DONE AND ORDERED on February 6, 2025, in Tallahassee, Leon County, Florida.

J. A. Spejenkowski

J.A. Spejenkowski, Arbitrator
Dept. of Business and Professional Regulation
Division of Florida Condominiums,
Timeshares and Mobile Homes
Arbitration Section
2601 Blair Stone Road
Tallahassee, FL 32399-1030
Telephone: 850.414.6867
Facsimile: 850.487.0870

TRIAL DE NOVO AND ATTORNEY'S FEES

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed within 30 days in accordance with Section 718.1255(4)(k), Florida Statutes and Rule 61B-45.043, Florida Administrative Code. As provided by Section 718.1255, Florida Statutes, the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, Florida Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been sent by email and US Mail on February 6, 2025, to:

Carlos F. Martin, PA
2525 Ponce de Leon Boulevard
Suite 300
Coral Gables, FL 33134
Email: carlos@cmartinlegal.com

Robert Kelly, Esq.
Law Office of Robert P. Kelly
2699 Stirling Road
Suite C403B
Fort Lauderdale, FL 33312
Email: rpkelly@rpkellylawoffice.com

J. A. Spejenkowski
J.A. Spejenkowski, Arbitrator