

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:
Keith Jackson,
Petitioner,
v.
Val Vista Lakes Community Association,
Respondent.

No. 23F-H006-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: October 24, 2022

APPEARANCES: Keith Jackson represented himself. Attorney Eric Cook represented Val Vista Lakes Community Association and its Board of Directors.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

FINDINGS OF FACT

1. Val Vista Lakes Community Association ("Association" or "Respondent" herein) is a condominium community association located in Gilbert, Arizona. The Association has more than 1,000 members.

2. On or about July 30, 2022, Keith Jackson ("Petitioner") filed a single-issue petition ("Petition") with the Department of Real Estate ("Department"). The Petition alleged that Association's Board of Directors ("Board") improperly rejected a recall petition to remove four Board members ("Recall Petition") in violation of Arizona Revised Statutes ("A.R.S.") § 33-1813.

3. On July 12, 2022 at a Board meeting, Andy Ball submitted multiple gathered-signatures on 26 pages, each page entitled "Petition to Recall the following Val Vista Lakes Board Members."¹ The four named persons are: Bill Suttell, Sharon Maiden, Doug Keats, and Steve Nielson.

4. The recall sheets in Respondent's Exhibit 1 appear to contain 211 or 212 signatures.²

¹ See Respondent's Exhibit 1.

² The Tribunal did not count the signatures; the stated count of 211 is based on numbers that are handwritten on the pages. However, one of the 26 pages has no handwritten number thereon; that page contains one address [Lot #1A] and contains three signatures that appear to be the same signature. Therefore, the number of signatures would appear to be 212. At hearing, Petitioner stated there were 214 signatures in/on the 26 pages.

1 5. On July 15, 2022, First Service Residential³ ("FSI") noticed Association
2 members with a message from Bill Suttell, Board President, regarding the Recall Petition
3 having been turned over to FSI for vetting of the signatures.⁴ Mr. Suttell further indicated
4 that "if the [Recall] Petition is valid" a recall vote would be held within 30 days.

5 6. In her October 14, 2022 Affidavit, Association Secretary Kay Adams indicated
6 that she had received a "written report regarding the signature count and verification to the
7 [Recall] petition."⁵

8 7. On July 18, 2022, the Association noticed its members that the Recall Petition
9 had been rejected "for not meeting the criteria of the law."⁶

10 8. On July 19, 2022, Kirk Kowieski of FSI informed an Association member as
11 follows, in pertinent part:

12 The group submitting the recall petition can submit a "new" (amended)
13 petition that has the same names, addresses and signatures as the original
14 as well as any additional signees. Because the first/original petition was
15 "officially" submitted and became a record of the Association, the
16 Association had to accept it and consider it as presented.

17 9. On July 19, 2022, Petitioner turned in a set of 32 pages (including the original
18 26);⁷ each page is entitled "Petition to Recall the following Val Vista Lakes Board
19 Members."⁸ The four named persons are: Bill Suttell, Sharon Maiden, Doug Keats, and
20 Steve Nielson.

21 10. On July 25, 2022, FSI noticed Association members regarding the Board's
22 rejection of a "second petition" that had been "delivered to the clubhouse" by Petitioner on
23 July 19, 2022.⁹ FSI stated that it had been rejected based on Arizona Revised Statutes
24 ("A.R.S.") § 33-1813(A)(4)(g).¹⁰

25 ³ First Service Residential is a property management company; at hearing, Board Secretary Kay Adams
26 testified that FSI maintains the Association's records. On documents in the hearing record, Kirk Kowieski
27 is stated to be a Vice-president of the company. See Petitioner's Exhibit C.

28 ⁴ See Petitioner's Exhibit A.

29 ⁵ Such "written report" was not submitted to the hearing record.

30 ⁶ See Respondent's Exhibit 2; see also Petitioner's Exhibit B.

⁷ At hearing, Petitioner stated that there were 37 additional signatures; he asserted, therefore, the total
signatures was "over 250."

⁸ See Petitioner's Exhibit F.

⁹ See Petitioner's Exhibit D.

¹⁰ The proper citation is stated herein.

11. The matter was not resolved informally between the parties and the Department subsequently forwarded the matter for an administrative hearing on the allegations in the Petition.

12. At hearing, Petitioner argued that, under the statute, the Board cannot act on a petition for removal of a board member unless the petition is "valid," by which he arguably inferred "complete." Petitioner was not at the July 12, 2022 meeting; however, he argued that when Mr. Ball turned in the 26 pages, Mr. Ball had stated "here's the first batch." In that regard, Petitioner argued that Mr. Kowieski's July 19, 2022 email signaled that Mr. Kowieski had the authority to receive a "completed" petition.

13. Regarding the Board, Petitioner indicated that the Board has a total of 9 seats: 4 officers and 5 general members. Petitioner indicated that elections are held every year for the varying terms; the terms of the officers expire as follows:

- a. Current President, Bill Suttell, in "November;"
- b. Current Vice-president, in "November;"
- c. Current Treasurer, Doug Keats, "next year;"
- d. One General Board member, "next year."

14. In Closing, Petitioner argued that only "complete" petitions may be acted on by a board, otherwise, the members of an association could never recall a person from a board position through the submission of an incomplete recall petition. Petitioner argued that the July 19, 2022 petition paperwork should be acknowledged by the Tribunal as a "valid" petition by which the Tribunal should order the Board to call a special meeting and allow the members to vote on the petitioned-recall.

15. At hearing, Respondent argued that both A.R.S. § 33-1813(A)(4)(a) and (b) call for a specific number of eligible voters to have signed the removal petition and, when there is receipt of a removal petition that meets the statutory criteria, that is when the Board is obligated to call a special meeting. Respondent argued that neither A.R.S. § 33-1813(A)(4)(a) or (b) set any criteria regarding "completeness." Finally, Respondent argued that A.R.S. § 33-1813(A)(4)(g) is specific regarding recall petitions, for the same member of a board, are not permitted to be submitted "more than once during each term of office for that member."

CONCLUSIONS OF LAW

1. The Department has jurisdiction to receive petitions, hear disputes between a property owner and a condominium community association, and take other actions pursuant to A.R.S., Title 33, Chapter 16.

2. The Arizona Office of Administrative Hearings (Tribunal) is a separate state agency authorized by statute to hear and decide agency-referred contested matters through the conduct of an administrative hearing and issuance of a written decision.

3. In this proceeding, pursuant to Arizona Administrative Code (A.A.C.) R2-19-119, Petitioner bears the burden of proving by a preponderance of the evidence that, as alleged, Association has violated A.R.S. § 33-1813.

4. A preponderance of the evidence is “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).

5. A.R.S. § 33-1813(A) provides as follows:

Notwithstanding any provision of the declaration or bylaws to the contrary, all of the following apply to a meeting at which a member of the board of directors, other than a member appointed by the declarant, is proposed to be removed from the board of directors:

.....

4. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

(a) In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least twenty-five percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.

(b) Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are eligible to vote in the

association at the time the person signs the petition equal to at least ten percent of the votes in the association or by the number of persons who are eligible to vote in the association at the time the person signs the petition equal to at least one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.

.....
(g) A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

6. The hearing record is not specific as to the exact number of FSI-verified signatures on the July 12, 2022 Recall Petition papers; the “written report” received by Ms. Adams from FSI was not included within the hearing record, but indicated to Ms. Adams that there were an insufficient number of signatures.¹¹ The Tribunal’s calculation based solely on the handwritten numbers on the 26 sheets totaled 211 signatures. The Administrative Law Judge concludes that there is no evidence in the hearing record that the number of signatures on the 26 pages was sufficient to meet the statutory criteria. Therefore, the hearing record demonstrates that the Board did not violate A.R.S. § 33-1813 when it rejected the July 12, 2022 Recall Petition.

7. A.R.S. § 33-1813(A)(4)(g) provides that a petition which calls for the removal of the same member of the board of directors “shall not be submitted more than once during each term of office for that member.” Therefore, in this case, the July 19, 2022 “second” petition which petitioned for the removal of the same four Board members that were named on the “original” Recall Petition, including the named officers, was not permitted by statute. Therefore, the Board did not violate A.R.S. § 33-1813 when it rejected the July 19, 2022 “second petition.”

8. Therefore, based on the hearing record, the Administrative Law Judge concludes that Petitioner has not established, as alleged, any violation by Association of A.R.S. § 33-1813. As a result, the Administrative Law Judge concludes that Petitioner’s Petition shall be dismissed.

¹¹ See Adams Affidavit.

ORDER

IT IS ORDERED that Petitioner's Petition is dismissed.

IT IS FURTHER ORDERED that Petitioner bears his \$500.00 filing fee.

NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

Done this day, November 8, 2022.

/s/ Kay Abramsohn
Administrative Law Judge

Transmitted electronically this 8th day, November 2022 to:

Louis Dettorre, Commissioner
Arizona Department of Real Estate

Keith Jackson
2158 E. Drake Circle
Gilbert, AZ 85234
keithjackson@gmail.com

Eric L. Cook
Lewis Brisbois Bisgaard & Smith LLP
2929 N. Central, Ste 1700
Phoenix, AZ 85012
Eric.Cook@lewisbrisbois.com

By Miranda Alvarez
Legal Secretary