

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

IN RE: PETITION FOR ARBITRATION

**TENNIS CLUB II COURTS CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2005-06-4758

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

SUMMARY FINAL ORDER

This final order is entered pursuant to rule 61B-50.119(3), Florida Administrative Code, which provides that "[a]t any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order awarding relief and failing to certify the recall if the arbitrator finds that no meritorious defense exists or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief."

On December 19, 2005, Tennis Club II Courts Condominium Association, Inc. (petitioner or association), filed a petition for recall arbitration with the Division seeking affirmation of the board's decision not to certify the recall attempt of December 6, 2005. As no unit owner representative was named in the petition or on the recall agreement, on January 9, 2006, the undersigned entered an order requiring the association to post a copy of the petition and the order on the common area of the condominium, as well as an "Order Allowing Respondent to Answer Petition." The order also required the association to file proof of posting with the arbitrator; however, on February 27, 2006, an

Order Requiring Proof of Posting was entered, as the association had yet to file such proof. On March 3, 2006, the association, by way of counsel, filed proof of posting the petition and the order in the clubhouse of the condominium on February 28, 2006. The respondent was permitted to file an answer within fourteen days of posting (by March 15, 2006); however, as of the date of this order, no response has been filed on behalf of the unit owners voting for recall.

In the petition for arbitration, the petitioner restated the numerous reasons why the board determined not to certify the recall attempt at the board meeting held on December 13, 2005. At the meeting, the board concluded that the recall attempt by way of written agreement failed to substantially comply with rule 61B-23.0028, Florida Administrative Code, in that the agreement attempted to recall the entire board, yet did not list any of the board members to be recalled; no recall or retain spaces were provided; no signature spaces were provided; some signatures listed under the "Name" column were illegible; replacement candidates were not listed in the form of a ballot; no indication that the person listed was authorized to cast a vote; and no unit owner representative was designated. The recall agreement consisted of three pages that provided the following language at the top of each page, followed by two columns entitled "NAME" and "UNIT NUMBER":

We the undersigned unit owners at Tennis Club II feel that the current board is not acting in the best interest of the building and unit owners. The current board is ignoring some of the association rules and regulations as well as state laws and regulations relating to condominium associations. We therefore request that the current board be recalled and replaced by the following unit owners:

Gene Lofley
Steve Rosenthal
Danny Torres
Patrice Bisiot
Jim Van Hook
Tommy in Unit 412
Paul Turegeon

Upon review of the recall agreement, the arbitrator affirms the decision of the board not to certify the recall attempt because it is clear that the recall agreement fails to remotely comply with rule 61B-23.0028, Florida Administrative Code, for all of the reasons stated in the petition for arbitration. See *Seville Place Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-01-1153, Summary Final Order (April 8, 2004)(a written recall agreement that fails to list by name each board member sought to be recalled; to provide spaces by the name of each board member sought to be recalled so that the person executing the agreement may indicate whether that individual board member should be recalled or retained; to list at least as many replacement candidates as members subject to recall while providing a space for write-in votes; and to provide a unit owner's signature to affirm the authority to vote along with a space to indicate the date it was signed, fails to substantially comply with rule 61B-23.0028(1), Fla. Admin. Code, and cannot be certified).

Fatal to any recall agreement is the failure to individually list the board members sought to be recalled and include recall and retain spaces next to each board member's name, as well as the failure to provide a signature line as required in subsections 1(a)-(b) and 1(d)-(e) of rule 61B-23.0028, Florida Administrative Code, which provides as follows:

- (1) Form of Written Agreement. All written agreements used for the purpose of recalling one or more directors shall:
 - (a) List by name each board member sought to be recalled;
 - (b) Provide spaces by the name of each director sought to be recalled so that the person executing the agreement may indicate whether that individual director should be recalled;

 - (d) Provide a space for the person signing the written agreement to state his name, identify his unit and indicate the date the written agreement is signed;
 - (e) Provide a signature line for the person executing the written agreement to affirm that he is authorized in the manner required by the condominium documents to cast the vote for that unit

As the recall agreement in this case did not list the board members sought to be recalled but simply referred to them collectively, and as the recall agreement did not include separate recall and retain spaces next to each of the board members sought to be recalled, the unit owners participating in the recall were not afforded the opportunity to choose which members should be recalled. The purpose of requiring board members to be individually listed with recall and retain spaces next to each name is to ensure that each voter is afforded the opportunity to recall or retain that particular member; otherwise, the recall agreement inextricably links the fate of one board member to another. In other words, a voter who greatly desires to remove one board member should not have to vote to remove all of the board members as his only option. This failure, alone, renders a recall agreement void *ab initio*. See *Laguna Club Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 99-1355, Summary Final Order (July 30, 1999); *Olive Glen Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 02-4985, Final Order Affirming Decision Not to Certify Recall (July 3, 2002); and *The Sails Condominium Association, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2004-01-4011, Summary Final Order (April 19, 2004).

Furthermore, the recall agreement in this case does not provide for signature lines, it merely provides spaces for the "name" of the unit owners and their respective "unit number[s]." Although it appears that some voters signed their names rather than printed them, many did not, and some members listed their first names only. The purpose of the requirements for both name and signature spaces are self-evident in the language of the rule: identification of the unit owner, authorization of the unit owner to vote, and execution of the ballot or agreement. See *Lakeforest at St. Lucie West*

Homeowners' Association, Inc. v. Homeowners Voting for Recall, Arb. Case No. 2004-05-5982, Summary Final Order (January 31, 2005)(the absence of a signature line on the recall ballot technically voids the ballot, rendering the recall agreement void *ab initio*).¹ Similar, if not identical to this case, the *Lakeforest* recall ballots only provided spaces marked "name" and "address."

As the recall agreement is wholly deficient, the unit owners are strongly encouraged to review the rules for recall contained in the Florida Administrative Code, and to visit the Division's website at www.myflorida.com/dbpr/lsc/arbitration to obtain a recent copy of Chapter 718, Florida Statutes, the Florida Administrative Code, instructions on how to effectuate a recall, and a sample recall ballot, as well as access to previous recall arbitration decisions.

Based on the foregoing, it is

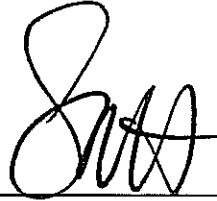
ORDERED:

1. The decision of the association to not certify the recall of David Thidodeau, Gene Lofley, Gerri Topple, Peter Sears, Steve Wistreich, Geoffrey Vitrano, and Patrice Bisiot is AFFIRMED. These individuals shall continue to serve as board members.

2. The association shall post a copy of this order for seven (7) days in the same manner as previously required by the arbitrator.

¹ Although the instant case is a condominium association and the case cited is a recall in a homeowners' association, the recall rules for each are substantively identical.

DONE AND ORDERED this 5th day of April, 2006, at Tallahassee, Leon County,
Florida.

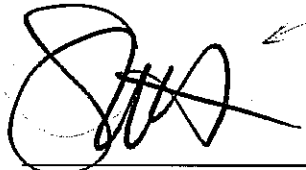


Susan Wilkinson Harnden, Arbitrator
Division of Florida Land Sales,
Condominiums, and Mobile Home
Dept. of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing summary final order has been sent by facsimile and by U.S. Mail to the following persons on this 5th day of April, 2006:

Donna D. Berger
Becker & Poliakoff, PA
3111 Stirling Road
Fort Lauderdale, FL 33312
facsimile: (954) 985-4176



Susan Wilkinson Harnden, Arbitrator