

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

IN RE: PETITION FOR ARBITRATION

**TOWN & COUNTRY CONDOMINIUM
ASSOCIATION OF LAUDERDALE LAKES, INC.,**

Petitioner,

v.

Case No. 2007-00-1728

UNIT OWNERS VOTING FOR RECALL,

Respondent.

_____ /

SUMMARY FINAL ORDER

On January 8, 2007, Town & Country Condominium Association of Lauderdale Lakes, Inc. (the Association) filed a Recall Arbitration Petition. Since the unit owners voting for recall had not designated an owner representative, on January 11, 2007, the arbitrator issued an Order Requiring Posting and Allowing Respondent to Answer Petition. The order instructed the Association to post the order and a copy of the Arbitration Recall Petition. The order further directed the Respondent to file an answer within ten days of the date of posting, failing which the facts alleged in the Association's petition would be presumed true. On February 14, 2007, the Association filed an affidavit indicating that the Association complied with the order requiring posting on January 16, 2007. The Association also indicated that it hand delivered a copy of the petition to the unit owner representative.¹ As of the date of this order, the Respondent

¹ Apparently, subsequent to the filing of the petition and issuance of the order requiring posting, the Association became aware of the identity of the unit owner representative, James Goldsby.

has not filed an answer. Therefore, the facts alleged in the petition are presumed to be true and this Summary Final Order is entered accordingly.

Statement of Issue

The issue presented in this case is whether the written recall agreement received by the Association on December 22, 2006, should be certified.

Findings of Fact

1. Town & Country Condominium Association of Lauderdale Lakes, Inc. is the legal entity responsible for the operation of the Town & Country Condominium of Lauderdale Lakes.

2. The Association contains fifty-three voting interests.

3. On December 22, 2006, the Association received a written recall agreement seeking to recall all five members of its board of directors.

4. The written recall agreement was in the form of a petition, with an introductory paragraph as follows:

December 21, 2006

The residents of Town and Country Condos, recall the present association board, due to numerous mistakes and other issues pertaining to hurricane Wilma and upkeep[ing] [sic] of the community.

Please sign below to vote in the new board members as follows:

JAMES GOLDSBY	(President, unit# 402)
EDGAR LATTIMORE	(Vice President, unit# 407)
PEGGY STEVENS	(Secretary, unit#)
PATRICIA WILLIAMS	(Treasurer, unit# 205)
DENISE THOMPSON	(Member, unit# 808)

The introductory paragraph was followed by lines for printed name, signature, unit number and date.

5. The recall agreement was signed by twenty-six persons.

6. The recall agreement clearly failed to individually list the board members subject to recall in order to permit owners to decide to recall or retain individual directors.

7. On January 2, 2007, the Association's board of directors held a meeting during which they choose not to certify the recall because it failed on its face to obtain a sufficient number of votes to recall any of the directors

Conclusions of Law

1. The undersigned has jurisdiction over the parties and subject matter of this dispute, pursuant to sections 718.112(2)(j)3. and 718.1255, Florida Statutes. In accordance with section 718.112(2)(j)3., Florida Statutes, the unit owners voting in favor of the recall are the Respondent in this matter.

2. Section 718.112(2)(j), Florida Statutes, provides that any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. Since the Association consists of fifty-three voting interests, twenty-seven votes are needed to recall a board member. Therefore, the Association properly chose not to certify the recall because, on its face, the recall is only signed by twenty-six persons.

3. Moreover, it is quite clear that the written recall agreement attempts to recall all the board members at once without providing separate recall/retain spaces by

which the unit owners may choose to recall or retain individual board members. There are numerous arbitration cases holding that a recall agreement is fatally flawed where the recall agreement fails to provide separate recall/retain lines for each person subject to the recall as required by rule 61B-23.0028(1)(b), Fla. Admin. Code, so that the person executing the agreement may indicate whether that individual board member should be recalled or retained. See, for example, *Olive Glen Condominium Ass'n v. Unit Owners Voting for Recall*, Arb. Case No 02-4985, Final Order Affirming Decision Not to Certify Recall (July 3, 2002); *Laguna Club Condominium Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 99-1355, Summary Final Order (July 30, 1999); *Board of Directors of Pinebark Condominium Ass'n, Inc. v. Lopez and Other Unit Owners*, Arb. Case No. 93-0177. In fact, a recall agreement not containing recall and retain spaces is considered void *ab initio*. See, e.g., *Greye v. Alpine Woods Ass'n, Inc.* Arb. Case No. 2004-04-6686, Order on Respondent's Motions (November 8, 2004).

4. In *Pinebark, supra.*, the arbitrator discussed the importance of permitting the unit owners to vote to recall or retain board members individually as required by rule 61B-23.0028(1)(b), Fla. Admin. Code, as follows:

The purpose of the rule is to ensure that no duly elected board member is removed from office unless a majority of the voting interests actually want that board member recalled. If board members were allowed to be "linked" in a written recall agreement, the result could be that a competent board member...would be removed from office only because she or he was linked with [the board member the majority wanted removed]. The requirement of Rule 61B-23.0028(1)(b) ensures that no duly elected board member is removed from office solely due to this type of linkage.

5. The recall agreement in the present case is fatally flawed in that it inextricably linked all the board members by not permitting a unit owner to vote to recall

one and retain the others, thus substantially failing to comply with rule 61B-23.0028(1)(b), Fla. Admin. Code.

Based upon the foregoing, it is ORDERED:

The Association's decision not to certify the recall is affirmed.

DONE AND ORDERED this 16th day of February 2007, at Tallahassee, Leon County, Florida.

James W. Earl, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
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 U.S. Mail a copy to the following persons on this 16th day of February, 2007:

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James W. Earl, Arbitrator