

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

**IN RE: PETITION FOR ARBITRATION**

**Bravura I Condominium Association, Inc.,  
Petitioner,**

**v.**

**Case No. 2005-05-5563**

**Unit Owners Voting For Recall,  
Respondent.**

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**SUMMARY FINAL ORDER**

This final order is entered pursuant to rule 61B-50.119, Florida Administrative Code, which requires the arbitrator, at any time after the filing of the petition and where no disputed issues of material fact exist, to 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 October 12, 2005, the Bravura I Condominium Association, Inc. (the association) received a written recall agreement attempting to recall all of the members of the association's board of directors (the board). The board determined not to certify the recall at a meeting held on October 18, 2005, finding that it was defective for various reasons including that the written recall agreement did not provide spaces by the name of each board member sought to be recall so that the person executing the

agreement could indicate whether that particular board member should be recalled or retained.

On October 24, 2005, the association filed a petition for recall arbitration. The respondent in this matter, the unit owners voting in favor the recall, filed an answer to the petition on November 7, 2005. The answer included what the respondent purported to be a true copy of the written recall agreement and the cover letter that accompanied it when it was served on the association.

The written recall agreement provided by the respondent consists of a letter that states:

PETITION TO RECALL  
THE BOARD OF DIRECTORS  
OF BRAVURA CONDOMINIUM ASSOCIATION

In accordance with F.S. 718.112, the undersigned unit owners of Bravura Condominium I and II, submit this Petition requesting the recall of all of the members of the Board of Directors of the Bravura Condominium Association in the manner authorized by Florida Statutes.

Attached to this Petition are the names of members of the Bravura Condominium Association petitioning the recall, along with their unit numbers, signatures and date of signatures.

The lists of names and signatures as described in the letter were attached in the form of a petition, each unit owner signing directly below the prior signatory.

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 agreements fail 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).

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.

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. As this is dispositive in this matter, the board's other reasons for not certifying the recall need not be addressed.

Therefore, based upon the foregoing, it is

ORDERED:

The decision of the board not to certify the recall of the board members is hereby APPROVED and AFFIRMED.

DONE AND ORDERED this 10<sup>th</sup> day of November, 2005, at Tallahassee, Leon County, Florida.

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James W. Earl, Arbitrator  
Arbitration Section  
Department of Business and  
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 U.S. Mail and facsimile copy to the following persons on this 10<sup>th</sup> day of November, 2005 as indicated below:

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Attorney for the Unit Owners

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James W. Earl, Arbitrator