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No. 22F-H2222048-REL

ADMINISTRATIVE LAW JUDGE DECISION

The Camelview Greens Homeowners Association,
Respondent.

HEARING: September 19, 2022 at 9:00 AM.

APPEARANCES: Robert Ochs (“Petitioner”) appeared on his own behalf. Ashley Moscarello, Esq. appeared on behalf of The Camelview Greens Homeowners Association (“Respondent” and “Association”) with Carl Westlund as a witness.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

THE PARTIES AND GOVERNING DOCUMENTS

1. Respondent is a homeowners' association whose members own properties in the Camelview Greens residential real estate development located in Scottsdale, Arizona. Membership for the Association is comprised of Camelview Greens homeowners.

2. Petitioner is a Camelview Greens subdivision property owner and member of the Association.

1 3. The Association is governed by its Covenants, Conditions, and Restrictions
2 ("CC&Rs")¹, and overseen by a Board of Directors ("the Board"). The Association is also
3 regulated by Title 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

4 a. Respondent's CC&Rs were originally recorded by the Maricopa County
5 Recorder's Office on July 25, 1984. They were amended for the first time on
6 November 30, 1984, and then later amended for a second time on May 31,
7 1988.²

8 4. Since 2018 Respondent has been managed by The Management Trust,
9 LLC ("TMT").

10 **BACKGROUND AND PROCEDURE**

11 5. The Department is authorized by statute to receive and to decide petitions
12 for hearings from members of homeowners' associations and from homeowners'
13 associations in Arizona.

14 6. On or about April 24, 2022, Petitioner filed a single issue petition with the
15 Department which alleged that the Association failed to comply with a February 27, 2022,
16 request for "materials list and specifications as it relates to the most recent roof
17 replacement; materials list and specifications utilized for any past replacement and/or
18 repairs from when the Certificate of Occupancy was issued from 1986 up to the present"
19 pursuant to Arizona Revised Statutes ("ARIZ. REV. STAT.") § 33-1805.³

20 7. On or about May 11, 2022, Respondent returned its ANSWER to the
21 Department whereby it denied Petitioner's claim(s).⁴

22 8. On May 17, 2022, the Department referred this matter to the Office of
23 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
24 on July 15, 2022,⁵ to determine whether a violation of ARIZ. REV. STAT. § 33-1805
25 occurred.

26 ¹ See Agency File, pages 11-60.

27 ² See Agency File, pages 64 and 70.

28 ³ See Department's electronic file at HO22-2222048_HOA_Petition.pdf.

29 ⁴ See Department's electronic file at HO21-2222048_Response_Petition.pdf.

30 ⁵ For administrative reasons OAH was unable to hear the matter on the scheduled date for hearing. On July
 18, 2022, the matter was continued with the parties' consent and reset for September 09, 2022. On July 20,
 2022, however, due to a scheduling conflict, the matter was continued to September 19, 2022, whereby it
 was heard.

HEARING EVIDENCE

9. Petitioner testified on his own behalf and submitted Exhibits 1-8. Respondent called Carl Westlund as a witness and submitted Exhibits A-D. The Department's electronic files and Agency File were admitted into the record as their own exhibits. The substantive evidence of record is as follows:

- a. Petitioner has owned residential property located at 7801 E. Joshua Tree Ln. Scottsdale, AZ 85250 since December 2015. Petitioner uses the property as an investment; specifically, for short term rentals.
- b. In late July 2021, there was a storm that caused considerable destruction to Petitioner's property, including the roof and related interior damage.
- c. Pursuant to a preexisting agreement with the Association, on September 07, 2021, the Association had repairs to Petitioner's roof completed by a local roofer ("Roofer"). At that time, Petitioner's tenant ("Tenant") was present for the repairs, whereby Tenant was subjected to accusations by Roofer that Roofer had not originally installed the roof and that Petitioner had made poor "improvements" to the work. As a result, Petitioner submitted a complaint to the Association, and the Association sent Roofer back to the property whereby he admitted performing the original scope of work. Roofer alleged, however, that the crew who performed the work had since been fired, but agreed to bring new trades to make necessary repairs or replacements to address the leaks and other damage from the storm. Roofer's subsequent repairs did not prove successful, as Tenant reported further leaks to Petitioner on or about February 24, 2022.
- d. On February 27, 2022, Petitioner submitted the following 2-part records request to the Association:
 - (1) [M]aterials list and specifications as it relates to the most recent roof replacement, and (2) materials list and specifications utilized for

any past replacement and/or repairs from when the Certificate of Occupancy was issued from 1986 up to the present.⁶

- e. On March 03, 2022, Shawna Carr, TMT's executive community association manager, replied to Petitioner on behalf of the Association that she was "working on" Petitioner's request and "working on putting together a structural engineer to do a property walk."⁷
- f. On April 21, 2022, Petitioner asked Ms. Carr for an update regarding his records requests.⁸
- g. On May 11, 2022, Petitioner received a response letter from the Association's legal counsel, Dameon Cons, Esq. of Goodman Holmgren, which noted, in pertinent part, that the Association was "finalizing a response" to the underlying hearing petition.⁹ Attached, Mr. Cons included a "document which was requested by the Association from a roofing vendor and relates to your document request."¹⁰ The letter went on to allege that "the Association did not have any 'materials list' as your request demanded at the time" and "the Association did not have any documentation as described at the time of your request."¹¹ The letter concluded by offering that "the Association is more than willing to work with you on collecting the relevant documents in order to satisfy your documents request."¹²
 - i. The one page attachment dated September 07, 2021, was from I Deal Roofing Co., doing business as I-Do-Dealings Roofing LLC ("Ideal"), out of Glendale, AZ. ROC License No. 277795. Petitioner's residence was listed as the project site for "roof replacement of damaged roof membrane."¹³

⁶ See Petitioner's Exhibit 3.

⁷ See Petitioner's Exhibit 4.

⁸ See Petitioner's Exhibit 6.

⁹ See Petitioner's Exhibit 7.

¹⁰ *Id.*; see also Petitioner's Exhibit 8.

¹¹ See Petitioner's Exhibit 7.

¹² *Id.*

¹³ The scope of work included, but was not limited to, the following: remove existing tiles and stack to enable to clean surface for new underlayment, remove existing battens and underlayment where damaged and

ii. The exact date TMT and/or the Association obtained this document from Ideal is unknown.

h. In mid-July 2022, Ms. Carr left TMT for reasons unrelated to this matter. Per Ms. Carr's former manager at TMT, Carl Westlund, neither the Association nor TMT possessed any of the information Petitioner requested in its possession at the time his request was submitted, as the Association's prior management company had not provided TMT with any related records when TMT became the Association's property manager.

CLOSING ARGUMENTS

10. In closing, Respondent argued that the documents Petitioner requested were not “Association records” that were required to be kept per statute or in the ordinary course of business as a nonprofit company. Respondent also argued that its facilitation of repairs to Petitioner’s roof did not create a duty or reasonable expectation that the Association was required to keep a materials list and/or specifications for Petitioner’s September 2021 roof replacement, and argued further that it was never in possession of any materials list and/or specifications utilized for past replacement(s)/repair(s) for Petitioner’s residence from 1986 through February 27, 2022. Respondent opined that because Petitioner did not satisfy his burden of proof, his petition should be dismissed.

11. In closing, Petitioner argued that the “and other records” portion of ARIZ. REV. STAT. § 33-1805 required Respondent to maintain the records in his request, and provide them to him, or grant him access to examine them, within 10 business days from the date of his request. Petitioner opined that he sustained his burden of proof because Respondent failed to adhere to his request in a timely manner. Thus, Petitioner beseeched the tribunal to issue a decision in his favor and impose a civil penalty against Respondent.

CONCLUSIONS OF LAW

curled, clean deck surface and remove all nails and underlayment obstructions, install (2) new layers of 40lb UDL modified SBS base underlayment over tile deck surface of roofing area, install new roof support battens as needed to anchor tiles, install new metal j-pan as required and metal flashings as required, install new metal drip edge, install ridge and hip solite closures as required, and seal all penetrations and paint to match membrane installed. Supply 10yr workmanship warranty. Work to be completed in approximately 5 days. All work to be completed in a workmanship manner. See Petitioner's Exhibit 8.

1 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
2 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
3 planned community association. The owner or association may petition the department
4 for a hearing concerning violations of community documents or violations of the statutes
5 that regulate planned communities as long as the petitioner has filed a petition with the
6 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

7 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
8 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
9 case at bar. OAH has the authority to interpret the contract between the parties.¹⁴

10 3. In this proceeding, Petitioner bears the burden of proving by a
11 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.¹⁵
12 Respondent bears the burden of establishing any affirmative defenses by the same
13 evidentiary burden.¹⁶

14 4. “A preponderance of the evidence is such proof as convinces the trier of fact
15 that the contention is more probably true than not.”¹⁷ A preponderance of the evidence is
16 “[t]he greater weight of the evidence, not necessarily established by the greater number of
17 witnesses testifying to a fact but by evidence that has the most convincing force; superior
18 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
19 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
20 the other.”¹⁸

21 5. In Arizona, when construing statutes, we look first to a statute's language as
22 the best and most reliable index of its meaning. If the statute's language is clear and
23 unambiguous, we give effect to that language and apply it without using other means of
24 statutory construction, unless applying the literal language would lead to an absurd result.
25 Words should be given “their natural, obvious, and ordinary meaning.”¹⁹

26
27 ¹⁴ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

28 ¹⁵ See Arizona Administrative Code (“ARIZ. ADMIN. CODE”) R2-19-119.

29 ¹⁶ *Id.*

30 ¹⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁸ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

¹⁹ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

1 6. Statutes should be interpreted to provide a fair and sensible result.
2 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
3 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable
4 construction on statutes.").

5 7. When the legislature uses a word or words in one section of a statute, but
6 not another, the tribunal may not read those words into the section where the legislature
7 did not include them.²⁰ Unless defined by the legislature, words in statutes are given their
8 ordinary meanings.²¹

9 8. Each word, phrase, clause, and sentence of a statute or rule must be given
10 meaning so that no part will be void, inert, redundant, or trivial.²²

11 9. ARIZ. REV. STAT. § 33-1805 provides, in relevant parts, as follows:

12 A. Except as provided in subsection B of this section, ***all financial and***
13 ***other records of the association shall be made reasonably available***
14 ***for examination by any member*** or any person designated by the member
15 in writing as the member's representative. The association shall not charge
16 a member or any person designated by the member in writing for making
17 material available for review. ***The association shall have ten business***
18 ***days to fulfill a request for examination. On request for purchase of***
19 ***copies of records by any member*** or any person designated by the
20 member in writing as the member's representative, ***the association shall***
have ten business days to provide copies of the requested records.
An association may charge a fee for making copies of not more than
fifteen cents per page.

21 (Emphasis added.)

22 10. "The administrative law judge may order any party to abide by the statute,
23 condominium documents, community documents or contract provision at issue and may
24 levy a civil penalty on the basis of each violation.... If the petitioner prevails, the
25 administrative law judge shall order the respondent to pay to the petitioner the filing fee
26 required by section 32-2199.01." ARIZ. REV. STAT. § 32-2199.02(A).

27 11. Here, the material facts are clear.

28 ²⁰ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

29 ²¹ *Id.*

30 ²² See *Deer Valley v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

12. On February 27, 2022, Petitioner submitted 2 request to TMT: (1) a materials list and specifications for the underlying property's September 2021 roof replacement, and (2) a materials list and specifications for all prior authorized replacement(s)/repair(s) since 1986.

13. Here, TMT has only been the Association's community manager since 2018. Petitioner's secondary request for 35 years' worth records was unreasonable, as uncontroverted testimony established that TMT did not obtain any records from its predecessor upon the commencement of its position. Therefore, the Association did not possess the requested records at issue from 2018 to April 2022 either.

14. While Petitioner's primary request for documents related to his roof replacement, which took place approximately 5 months prior his request, was not unreasonable, the request was not for records kept in the ordinary course of business. Per the record, Ms. Carr had to reach out to Ideal to get a copy of a document TMT did not have in its possession. Neither party established when Ideal supplied the document to TMT, so it cannot be successfully argued that the record should have been supplied to Petitioner on or before March 11, 2022.

15. Notably, ARIZ. REV. STAT. § 33-1805 does not require a Homeowner's Association to provide copies of records upon request of a homeowner. Rather, the statute requires only that the association reasonably permit a homeowner to examine records. Petitioner did not establish that the documents in his records request were "financial" or constituted "other records of the association" as required by law. What the record reflects is that TMT was never in possession of the documents in Petitioner's request. While TMT could have provided notice of such within 10 business days, they were under no legal obligation to do so. No statutory violation(s) exist.

16. Based upon a review of the credible and relevant evidence in the record, Petitioner did not sustain his burden of proof.

17. Therefore, the Administrative Law Judge concludes that the Association's conduct, as outlined above, was not in violation of the charged provision of ARIZ. REV. STAT. § 33-1805.

ORDER

