

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Asmaa Kadhum,
4 Petitioner,

5 vs.

6 Goldcrest Patio Homes Condominium
7 Association,
8 Respondent.

No. 22F-H2222028-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 **HEARING:** September 19, 2022

10 **APPEARANCES:** Petitioner Asmaa Kadhum appeared on her own behalf. Jerry
11 Latschar, Vice President of the Board of Directors, appeared on behalf of Respondent
12 Goldcrest Patio Homes Condominium Association.

13 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

14
15 **FINDINGS OF FACT**

16 1. Goldcrest Patio Homes Condominium Association (Respondent) is an
17 association of condominium owners located in Scottsdale, Arizona.

18 2. On or about January 12, 2022, Asmaa Kadhum (Petitioner)¹ filed a petition
19 with the Arizona Department of Real Estate (Department), alleging that Respondent had
20 violated the provisions of A.R.S. Title 33, Chapter 16, Section 33-1256. Petitioner
21 specifically alleged, in relevant part, as follows:

22 Requesting to Waive/or Adjust Unreasonable Collection Fees.
23 According to Article 33-1256, when HOA places a lien against a Unit they
24 should have assessments for reasonable collection fees and for reasonable
25 attorney fee.
26 Gold Crest Patio Homes Association is charging us legal fees for a lien they
27 have placed (and released because it was invalid) against our unit Unit#101
28 of \$2,351.40

29 All errors in original.

30

¹ "Petitioner", as used in this decision references Asmaa Kadhum and/or Mazin Ahmed. While Ms. Kadhum filed the petition in this matter, most of the correspondence relating to the issue was from and to Mr. Ahmed. Ms. Kadhum did not specify whether she was a co-owner of the property at the hearing, but Respondent did not challenge her right to file a petition.

1 3. On or about January 12, 2022, the Department issued a notice to
2 Respondent regarding the petition.

3 4. On or about January 26, 2022, Respondent filed an answer to the petition
4 denying all allegations.

5 5. On or about February 11, 2022, the Department issued a Notice of Hearing
6 to the parties notifying them that a hearing on the petition would be conducted by the
7 Office of Administrative Hearings.

8 6. On April 4, 2022, a hearing was held on the petition and the parties
9 presented evidence and argument regarding the violation alleged in the petition.

10 7. Following the hearing, the Administrative Law Judge issued an
11 Administrative Law Judge Decision in which she concluded that Petitioner failed to
12 establish by a preponderance of the evidence that Respondent violated A.R.S. § 33-1256.

13 8. Petitioner then filed a Request for Rehearing with the Commissioner of the
14 Department asserting irregularity in the proceedings or any order or abuse of discretion by
15 the Administrative Law Judge that deprived a party of a fair hearing. In the narrative,
16 Petitioner stated, in pertinent part, as follows:

17 The administrative law judge found that the Respondent could not prove
18 that it was owed \$3,500 in legal fees. The judge found that the Respondent
19 owed \$661.50 in legal fees. however, the judge did not order the \$661.50
as the correct amount.

20 Petitioner requests a rehearing, or the administrative law judge decision be
amended to order that Petitioner owes only \$661,50 in legal fees.

21
22 All errors in original.

23 9. On or about July 20, 2022, the Commissioner of the Department granted
24 Petitioner's request for rehearing "for the reason/s outlined in the Rehearing Petitioner,
25 which is . . . Irregularity in the proceedings or any order or abuse of discretion by the
26 administrative law judge that deprived a party of a fair hearing." The Commissioner did
27 not explain what irregularity, order, or abuse of discretion deprived Petitioner of a fair
28 hearing.

29 10. The rehearing was set for September 19, 2022.

1 11. At the rehearing, the parties presented essentially the same evidence and
2 arguments as was presented during the original hearing in this matter. Respondent
3 provided an additional invoice from its attorney.

4 12. Based on the evidence presented at the rehearing, the following events
5 occurred.

- 6 a. Prior to April 21, 2020, Petitioner failed to pay Respondent certain
7 assessments and fees.
- 8 b. By letter dated April 21, 2020, Respondent provided notice to Petitioner
9 that Petitioner owed \$1,435.00 in past due assessments and fees. The
10 letter also indicated that if Petitioner did not bring the account current or
11 make arrangements to do so within 30 days, the account would be
12 turned over for further collection proceedings.
- 13 c. On April 30, 2022, Petitioner responded to the notice with an email in
14 which Petitioner stated that it was "not a good timing for collections" and
15 that the late fees should be removed as agreed so the total amount due
16 was \$1,350.00, not \$1,435.00. Petitioner stated that they were planning
17 to pay the whole amount "after this pandemic goes away."
- 18 d. On June 15, 2020, Respondent filed a Notice of Lien on Petitioner's unit
19 indicating a lien amount of \$2,199.00.
- 20 e. On August 7, 2020, Respondent's attorney sent Petitioner a notice that
21 the total amount due at that time, including past due assessments, late
22 fees, legal fees, and other charges, was \$2,504.00. It was also noted
23 that an additional \$104.00 would accrue for the recording of the Release
24 of Lien once the past due amount had been paid.
- 25 f. On or about September 10, 2020, Petitioner notified Respondent that
26 the lien amount of \$2,199.00 was incorrect and their attorney had
27 advised that this constituted an improper lien.
- 28 g. On November 13, 2020, Respondent recorded a Release of Lien against
29 Petitioner's unit.
- 30 h. On December 10, 2020, Respondent's attorney notified Respondent

1 that because the original Notice of Lien “included late fee charges that
2 were found to be invalid . . . a Release of Lien was recorded in order to
3 protect [Respondent] and our firm from a potential false lien claim.”

- 4 i. After the Release of Lien was filed, Respondent maintained Petitioner
5 owed approximately \$3,500.00 in legal fees accrued to collect the past
6 due amount.

7 13. Petitioner testified at hearing that Respondent placed a lien on the property
8 based on false statements and invoices. Petitioner questioned how Respondent
9 determined the legal fees of \$3,500.00 was due at the time of the original hearing.
10 Petitioner maintained that they should not be required to pay for legal fees incurred
11 because Respondent acted improperly. Petitioner acknowledged that the Release of Lien
12 had been filed and no lien was in place against the property at the time of the rehearing.

13 14. Mr. Latschar testified that all of the past due amounts and fees had been
14 paid and the only balance remaining was the legal fees Respondent had incurred
15 attempting to collect the past due amount. Mr. Latschar was uncertain where the
16 \$3,500.00 total originated. During the hearing, Mr. Latschar reviewed the invoices from
17 counsel showing charges attributable to Petitioner’s matter and to Respondent’s “General
18 Account.”

19 **CONCLUSIONS OF LAW**

20 1. The Department has jurisdiction to hear disputes between a property owner
21 and a condominium owners association. A.R.S. § 32-2199 *et seq.*

22 2. In this proceeding, Petitioner bears the burden of proving by a
23 preponderance of the evidence that Respondent violated A.R.S. § 33-1256. A.A.C. R2-
24 19-119.

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

29 4. A.R.S. § 33-1256 provides, in relevant part, as follows:
30

1 A. The association has a lien on a unit for any assessment levied against
2 that unit from the time the assessment becomes due. The association's lien
3 for assessments, for charges for late payment of those assessments, for
4 reasonable collection fees and for reasonable attorney fees and costs
5 incurred with respect to those assessments may be foreclosed in the same
6 manner as a mortgage on real estate but may be foreclosed only if the
7 owner has been delinquent in the payment of monies secured by the lien,
8 excluding reasonable collection fees, reasonable attorney fees and charges
9 for late payment of and costs incurred with respect to those assessments,
10 for a period of one year or in the amount of \$1,200 or more, whichever
11 occurs first, as determined on the date the action is filed.

12 5. At the time of the rehearing, Respondent did not have a recorded lien
13 against the property as it had previously been released. While Respondent asserted that
14 Petitioner owed approximately \$3,500.00 in legal fees related to the collection of past due
15 assessments, Respondent was not pursuing any enforcement action to collect that
16 amount allegedly owed at the time the petition was filed or the hearing or rehearing was
17 held in this matter.

18 6. The invoices Respondent submitted prior to the rehearing do not appear to
19 support a finding that Petitioner owed \$3,500.00 in legal fees. However, the exact amount
20 of legal fees attributable to Petitioner is not relevant in this matter as there were no
21 pending enforcement actions. This is not to say Petitioner may not be entitled to raise this
22 question in a separate venue. Rather, the Office of Administrative Hearings has no
23 jurisdiction to issue declaratory judgments.

24 7. Thus, Petitioner failed to establish by a preponderance of the evidence that
25 Respondent violated A.R.S. § 33-1256.

26 **ORDER**

27 IT IS ORDERED that Petitioner's petition is denied.

28 **NOTICE**

29 **This administrative law judge order, having been issued as a result of
30 a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party
wishing to appeal this order must seek judicial review as prescribed
by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such
appeal must be filed with the superior court within thirty-five days**

1 **from the date when a copy of this order was served upon the parties.**
2 **A.R.S. § 12-904(A).**

3 Done this day, October 11, 2022.

4
5 /s/ Tammy L. Eigenheer
6 Administrative Law Judge

7 Transmitted by either mail, e-mail, or facsimile October 11, 2022 to:

8 Louis Dettorre, Commissioner
9 Arizona Department of Real Estate
10 100 N. 15th Avenue, Suite 201
11 Phoenix, Arizona 85007

12 Attn:
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17 Goldcrest Patio Homes Condo Association
18 c/o Jerry Latschar (Statutory Agent)
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25 By: Miranda Alvarez
26 Legal Secretary
27
28
29
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