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No. 23F-H010-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEARANCES: Petitioner Richard Busack appeared on his own behalf. Independent The Cliffs Condominium Association was represented by Melissa Doolan.

FINDINGS OF FACT

2. On or about September 1, 2022, Richard Busack (Petitioner) filed a petition with the Arizona Department of Real Estate (Department), alleging that Respondent had violated Article III, Section 3.07 of the Declaration of Establishment of Condominium and of Declaration of Covenants, Conditions, and Restrictions for The Cliffs Condominium (CC&Rs). Petitioner indicated he were claiming one issue in the Petition and paid the required \$500.00 filing fee.

Petitioner states “On July 14, 2022, the Cliffs Condominium Board of Directors denied my [Petitioner’s] request for reimbursement kitchen cabinet and countertop replacement and mold remediation/restoration after a leaking pipe, located within/between the ceiling and subfloor of units 163 and 263, caused severe damage to my [Petitioner’s] kitchen by way of CAT 3 water coming from unit 263, therefore violating the CC&R’s Article III section 3.07. . .”

1

1 4. On or about May 30, 2022, Petitioner learned of a potential leak in his unit
2 from his tenant.

3 5. On or about June 1, 2022, Petitioner called Respondent's management
4 company and left a voicemail regarding the potential leak.

5 6. Two hours after notifying the management company, Petitioner contacted
6 "24hr Flood Pros", a restoration company, regarding the situation.

7 7. After a visual inspection, the restoration company determined there was
8 extensive water damage and mold in the unit.

9 8. In the evening of June 1, 2022, the management company notified
10 Petitioner that the information had been forwarded to the Board.

11 9. After not getting a response from the HOA, Petitioner had the restoration
12 company do further work to determine the source of the leak and repair options.

13 10. On or about June 3, 2022, the restoration company determined that the leak
14 was coming from the toilet in Unit 263.

15 11. The HOA repaired the leak in the pipe and repaired the drywall in
16 Petitioner's unit.

17 12. Petitioner requested that the HOA pay the total restoration bill of \$4300.00.
18 Initially, someone erroneously indicated that the HOA would pay for the work. That
19 statement was corrected by Board members.

20 13. When the HOA failed to perform any corrective work to the cabinetry in the
21 unit, Petitioner had the work done himself.

22 14. On or about July 13, 2022, Petitioner sent the HOA a demand letter
23 requesting \$8541.00 for the total cost to repair.

24 15. On or about July 14, 2022, Respondent advised Petitioner that the Board of
25 Directors had voted to deny Petitioner's claim for reimbursement.

26 16. Petitioner then filed the instant petition with the Department.

27 17. At the hearing, Petitioner argued that his unit was damaged by a leaking
28 pipe in the walls. Petitioner asserted that, because the pipe was in the walls, it was not in
29 an open and unobstructed condition and it was, therefore, the responsibility of the HOA to
30 fix the leak and the resulting damage. Petitioner argued that, had the leak occurred within

1 his unit, it would have been his responsibility to repair the damage, but because the leak
2 was outside the unit, it was the HOA's responsibility. Petitioner urged that, because the
3 HOA repaired the drywall in Petitioner's unit, the HOA accepted it had a responsibility to
4 repair the other damage. Petitioner acknowledged that the leak that led to the damage in
5 his unit came from a section of pipe between Unit 263 and where that pipe joined the pipes
6 serving other units.

7 18. Respondent elected not to present any testimony at the hearing.
8 Respondent's counsel avowed that the HOA had completed the repairs to the leak, but
9 had not yet made a determination if the costs of those repairs would be charged to Unit
10 263. Further, Respondent's counsel indicated that the HOA repaired the drywall because
11 Article III, Section 3.05 defines bearing walls as Common Elements.

12 **CONCLUSIONS OF LAW**

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

15 2. In this proceeding, Petitioner bears the burden of proving by a
16 preponderance of the evidence that Respondent violated the CC&Rs. A.A.C. R2-19-119.

17 3. A preponderance of the evidence is "[e]vidence which is of greater weight or
18 more convincing than the evidence which is offered in opposition to it; that is, evidence which
19 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW
20 DICTIONARY 1182 (6th ed. 1990).

21 4. Article III, Section 3.07 of the CC&Rs provides, in pertinent part, as follows:

22 **3.07 Maintenance By Owners.** Each Owner shall furnish and be
23 responsible for, at his own expense, all of the maintenance, repairs, and
24 replacements within his own Condominium Unit. Such obligation shall
25 include: . . . (c) the maintenance of, in an open and unobstructed condition,
26 all sewer and drainage pipes, water and other utility lines serving an
27 Owner's respective Condominium Unit between the points at which the
28 same enter the respective Condominium Unit and the points where the
29 same joins the utility lines serving other Condominium Units.

30 5. By its own terms, Article III, Section 3.07 addresses *condominium owners'*
responsibilities to maintain their units. While Petitioner argued his obligation to maintain
the pipes ends where the pipe leaves his unit, that is not a proper reading of Article III,

1 Section 3.07. Rather, unit owners are responsible for the maintenance of all sewer and
2 drainage pipes “between the points at which the [pipes] enter [the unit] and the points
3 where the [pipe] joins the utility lines serving other Condominium Units.”

4 6. Therefore, maintenance of the leaking pipe, which Petitioner acknowledged
5 was between the point where the pipe entered Unit 263 and where the pipe joined the
6 utility lines serving other units, was the responsibility of the owner of Unit 263.

7 7. Petitioner’s interpretation of “open and unobstructed condition” was also
8 erroneous. Rather than referencing that access to the pipe had to be open and
9 unobstructed, *i.e.*, not inside a wall, a plain reading of “open and unobstructed condition”
10 means that the pipe itself must not be allowed to remain clogged.

11 8. Petitioner failed to establish that Respondent violated Article III, Section
12 3.07 of the CC&Rs.

13 **ORDER**

14 **IT IS ORDERED** that Petitioner’s petition is denied.

15 **NOTICE**

16 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
17 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
18 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
19 **must be filed with the Commissioner of the Department of Real Estate**
20 **within 30 days of the service of this Order upon the parties.**

21 Done this day, December 16, 2022.

22 /s/ Tammy L. Eigenheer
23 Administrative Law Judge
24

25 Transmitted by either mail, e-mail, or facsimile December 16, 2022 to:

26 Louis Dettorre, Commissioner
27 Arizona Department of Real Estate
28 100 N. 15th Avenue, Suite 201
29 Phoenix, Arizona 85007
30 Attn:

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10 By: Miranda Alvarez

11 Legal Secretary