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No. 23F-H019-REL

ADMINISTRATIVE LAW JUDGE DECISION

V.

Respondent.

APPEARANCES: Petitioner Pamela McKinney appeared on her own behalf. Alan Meda, Esq. represented Respondent Valle Vista Property Owners Association. Sharon Grossi appeared as a witness for Respondent Valle Vista Property Owners Association.

FINDINGS OF FACT

2. On or about December 5, 2022, the Department issued a Notice of Hearing in which it set forth the issue for hearing as follows:

Petitioner states that the Respondent has violated “Article 8 of the Articles of Incorporation dated July 19, 1972 and corresponding Article 19 Sec. a and b of the [Declarations of Covenants, Limitations and Restrictions] relating to the expiration of the association charter at 50 years (2022). [Respondent] is attempting by Resolution/Memorandum of September 27, 2022 to amend the charter another 25 years without approval/vote of Council of co-owners.”

1 3. At hearing, Petitioner testified on her own behalf. Respondent presented the
2 testimony of Sharon Grossi, President of the Board.

3 4. Respondent consists of 4,357 lots that all fall within three units that were
4 annexed on different dates. Unit One was annexed on May 18, 1972, Unit Two was
5 annexed on November 1, 1972, and Unit Three was annexed on August 6, 1973.
6 Petitioner owns two lots in Unit One. Each of the three Units have recorded Declarations
7 of Covenants, Limitations and Restrictions ("CLRs").

8 5. All three CLRs had an original duration of 25 years. Petitioner's position is
9 that the CLRs automatically renewed for a period of 25 years, however after the expiration
10 of the 25 year renewal, the Articles of Incorporation expired for Units One and Two, and
11 will expire for Unit Three, and therefore Respondent ceases to exist because it is no
12 longer incorporated. Petitioner contends that new Articles of Incorporation must be
13 implemented and further, that if there is a conflict between the Articles of Incorporation
14 and the CLRs, the Articles of Incorporation control.

15 6. Petitioner referenced and testified regarding several communications from
16 the Board to the homeowners that informed the homeowners that the CLRs were expiring
17 and were up for renewal, and further advised of the various negative impacts to the
18 community that would occur in the event the CLRs were not renewed.¹

19 7. On September 27, 2022, Respondent's Board of Directors passed
20 Resolution 092722 extending the CLRs.² The Resolution states the following:³

21 The undersigned officers and members do hereby confirm that the following
22 resolution was adopted by the Directors of Valle Vista Property Owners
23 Association, Inc. at their Executive Board Meeting held on September 27,
24 2022, at its corporate offices in Kingman, AZ.

25 Valle Vista Property Owners Association Board of Directors have met with
26 legal counsel to review the following governing documents:

- 27 1. The Declaration of Covenants, Limitations and
28 Restrictions for Valle Vista Unit One recorded May 18, 1972,

29 ¹ See Petitioner's Exhibits 1-12.

30 ² See Respondent's Exhibit 9.

³ *Id.*

1 at Book 28, pages 205-211, official records of Mohave
2 County, Arizona (the Unit One CLR's");

3 2. The Declaration of Covenants, Limitations and
4 Restrictions for Valle Vista Unit Two recorded November 1,
5 1972, at Book 68, pages 173-181, official records of Mohave
6 County, Arizona (the Unit Two CLR's"); and

7 3. The Declaration of Covenants, Limitations and
8 Restrictions for Valle Vista Unit Three recorded August 6,
9 1973, at Book 142, pages 240-247, official records of Mohave
10 County, Arizona (the Unit Three CLR's")

11 And believe that it is reasonable to interpret the governing documents to
12 provide that the Unit One CLR's, the Unit Two CLR's, and the Unit Three
13 CLR's automatically renew for a period of 25 years or permit the Association
14 to renew without a vote as long as the same are not amended or modified.

15 . . .

16 8. This Resolution is what gave rise to Petitioner's filing of the Petition in this
17 matter.

18 9. Respondent's Articles of Incorporation dated July 19, 1972, Section VIII
19 state the following:⁴

20 The time of commencement of this corporation shall be the date upon which
21 the Arizona Corporation Commission shall issue its Certificate of
22 Incorporation and the termination of the Corporation shall be twenty-five
23 (25) years thereafter, with the power and privilege of renewal as provided by
24 law. Application for the renewal of such corporate existence shall be made
25 in a timely manner prior to the date of termination of the original corporation
26 charter.

27 10. On November 18, 1994, Respondent amended its Articles of Incorporation
28 with Articles of Amendment, specifically to Article VIII, which was amended to read as
29 follows: "The corporate existence of the VALLE VISTA PROPERTY OWNERS
30 ASSOCIATION, INC. is about to expire on July 19, 1997, the said corporate existence is
hereby renewed. The duration of the corporation shall be perpetual."⁵

11. On January 15, 1999, Respondent amended its Articles of Incorporation with
Articles of Amendment, specifically to Article VIII, which was amended to read as follows:

⁴ See Respondent's Exhibit 1 at 6.

⁵ See Respondent's Exhibit 3. Emphasis in original.

1 "That the commencement of this corporation shall be the date upon which the Arizona
2 Corporation Commission shall issue its Certificate of Incorporation and the duration of the
3 corporation shall be perpetual."⁶

4 12. Consequently, Respondent amended its Articles of Incorporation, Section
5 VIII, on both November 18, 1994 and January 15, 1999, which extended its duration
6 perpetually.

7 13. Petitioner was not aware of the 1994 and 1999 amendments to the Articles
8 of Incorporation until hearing. Petitioner testified that her concern is that the homeowners
9 did not vote for the amendments in 1994 and 1999, and she based her position for hearing
10 on the documentation she had and "wouldn't be here if [she] had these documents,"
11 referring to the two amendments. Petitioner asserted that the Board was "rogue."

12 14. Sharon Grossi, current President of Respondent's Board of Directors,
13 testified regarding the Amendments to the CLRs. Unit One's Amendment, dated July 19,
14 1972, amended Unit One's CLRs dated May 17, 1972.⁷ Section 19 of the Amended CLRs
15 for Unit One states the following:⁸

16 DURATION, AMENDMENT AND ENFORCEMENT: (a) These Covenants,
17 Limitations and Restrictions shall remain in full force and effect, being
18 binding on all parties and all persons claiming under them, for a period of 25
19 years from May 15, 1972, at which time said Covenants, Limitations and
20 Restrictions shall automatically be renewed for an additional period of 25
21 years, unless 66-2/3% or more of the owners of record, at that time, agree in
22 writing to changes, and said changes are made in a lawful manner.

23 (b) These Covenants, Limitations and Restrictions may be amended during
24 either 25-year period by an instrument in writing, signed and acknowledged
25 by the then owners of record of not less than 75% of the lots or other parcels
26 on said property. Said amendments will take effect only upon their proper
27 recording with the County Recorder of Mohave County, Arizona.

28 15. Section 17 of the Amended CLRs for Unit Two states the following:⁹

29 ⁶ See Respondent's Exhibit 4.

30 ⁷ See Respondent's Exhibits 6 and 5 respectively.

⁸ See Respondent's Exhibit 6. Emphasis in original.

⁹ See Respondent's Exhibit 7. Emphasis in original.

1 DURATION, AMENDMENT AND ENFORCEMENT: (a) These Covenants,
2 Limitations and Restrictions shall remain in full force and effect, being
3 binding on all parties and all persons claiming under them, for a period of 25
4 years from October 3, 1972, at which time said Covenants, Limitations and
5 Restrictions shall automatically be renewed for an additional period of 25
6 years, unless 66-2/3% or more of the owners of record, at that time, agree in
7 writing to changes, and said changes are made in a lawful manner.

8 (b) These Covenants, Limitations and Restrictions may be amended during
9 either 25-year period by an instrument in writing, signed and acknowledged
10 by the then owners of record of not less than 75% of the lots or other parcels
11 on said property. Said amendments will take effect only upon their proper
12 recording with the County Recorder of Mohave County, Arizona.

13 16. Section 19 of the Amended CLRs for Unit Three states the following:¹⁰

14 DURATION, AMENDMENT AND ENFORCEMENT: (a) These Covenants,
15 Limitations and Restrictions shall remain in full force and effect, being
16 binding on all parties and all persons claiming under them, for a period of 25
17 years from [date illegible], at which time said Covenants, Limitations and
18 Restrictions shall automatically be renewed for an additional period of 25
19 years, unless 66-2/3% or more of the owners of record, at that time, agree in
20 writing to changes, and said changes are made in a lawful manner.

21 (b) These Covenants, Limitations and Restrictions may be amended during
22 either 25-year period by an instrument in writing, signed and acknowledged
23 by the then owners of record of not less than 75% of the lots or other parcels
24 on said property. Said amendments will take effect only upon their proper
25 recording with the County Recorder of Mohave County, Arizona.

26 17. Ms. Grossi testified that there were no modifications/changes to the CLRs
27 when they were renewed. Therefore, they renewed automatically. Ms. Grossi explained
28 that the September 27, 2022 Resolution extending the CLRs was recorded because
29 Respondent "wanted a reflection of the automatic renewals."

30 18. Ms. Grossi testified regarding the practical impact to the community if the
CLRs were not renewed, including the decrease in value of the assets of the community.

¹⁰ See Respondent's Exhibit 8. Emphasis in original.

1 19. Ms. Grossi also addressed the exhibits offered by Petitioner including
2 various communications from the Board regarding voting for the renewal of the CLRs.¹¹
3 Ms. Grossi explained that the Board members had received “bad information” and
4 “thought that there had to be a vote.” After the Board consulted with its attorney, the
5 Board learned that a vote was only necessary if modifications/changes to the CLRs were
6 to be made, and that a vote was not necessary if the CLRs were simply renewing with no
7 modifications/changes.

8 20. Petitioner testified at hearing that it is her position that a renewal constitutes
9 a change to the CLRs because it is a change to their duration.

10 21. Ultimately, Petitioner asserted that the amendments to the Articles of
11 Incorporation were done “unlawfully” without a vote, that “just because they are recorded
12 doesn’t make them legal,” and if the CLRs renewed automatically, the Board should not
13 have sent out so many communications regarding their expiration and the need to vote
14 thereby creating angst for the members of the community. Petitioner continued to
15 contend throughout the hearing that the CLRs remain expired.

16 **CONCLUSIONS OF LAW**

17 1. Arizona statute permits an owner or a planned community organization to
18 file a petition with the Department for a hearing concerning violations of planned
19 community documents or violations of statutes that regulate planned communities.¹² That
20 statute provides that such petitions will be heard before the Office of Administrative
21 Hearings.

22 2. Petitioner bears the burden of proof to establish that Respondent committed
23 the alleged violation by a preponderance of the evidence.¹³ Respondent bears the burden
24 to establish affirmative defenses by the same evidentiary standard.¹⁴

25 3. “A preponderance of the evidence is such proof as convinces the trier of fact
26 that the contention is more probably true than not.”¹⁵ A preponderance of the evidence is

27 ¹¹ See Petitioner’s Exhibits 1-12.

28 ¹² A.R.S. § 32-2199.

29 ¹³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369,
30 372, 249 P.2d 837 (1952).

¹⁴ See A.A.C. R2-19-119(B)(2).

¹⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 “[t]he greater weight of the evidence, not necessarily established by the greater number of
2 witnesses testifying to a fact but by evidence that has the most convincing force; superior
3 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
4 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
5 the other.”¹⁶

6 4. Petitioner failed to prove by a preponderance of the evidence that
7 Respondent violated Article 8 of the Articles of Incorporation and Article 19 the CLRs
8 when it passed its September 27, 2022 Resolution to extend the CLRs another 25 years
9 without approval/vote of homeowners. The credible and probative evidence of record
10 established that Respondent amended its Articles of Incorporation, Section VIII, on
11 November 18, 1994, and again on January 15, 1999, which extended the duration of the
12 Articles of Incorporation perpetually. Further, all three Units’ CLRs were amended in 1972
13 and 1973, for a period of 25 years and provided for the *automatic renewal* for an additional
14 period of 25 years, *unless modifications/changes were made to the CLRs*. Petitioner
15 failed to establish by a preponderance of the evidence that any changes or modifications
16 were made to the CLRs, and the Administrative Law Judge concludes that the automatic
17 renewal of the CLRs does not constitute a modification/change that required a vote of the
18 homeowners.

19 5. Thus, Petitioner failed to sustain her burden to establish a violation by
20 Respondent of the CLRs Article 19 Sections A and B, and Article 8 of the Articles of
21 Incorporation.

22 **ORDER**

23 IT IS ORDERED that Petitioner’s Petition is dismissed.
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25
26

27 **NOTICE**

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29

¹⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).
30

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

6 Done this day, January 31, 2023.

7 /s/ Sondra J. Vanella
8 Administrative Law Judge
9

10 Transmitted by either mail, e-mail, or facsimile January 31, 2023 to:

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12 Arizona Department of Real Estate
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14 Phoenix, Arizona 85007
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30 By: OAH Staff