

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 23F-H018-REL

4 Shawna Townsend,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner,

6 v.

7 North Canyon Ranch Owners Association,

8 Respondent.
9

10 **HEARING:** January 19, 2023

11 **APPEARANCES:** Petitioner Shawna Townsend appeared on her own behalf. Haidyn
12 DiLorenzo, Esq. and Justin DeLuca, Esq. represented Respondent North Canyon Ranch
13 Owners Association. Josey Perkins appeared as a witness for Respondent North Canyon
14 Ranch Owners Association.

15 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

16 **FINDINGS OF FACT**

17 **Petitioner's Claim**

18 1. North Canyon Ranch Owners Association ("Respondent") is a
19 planned community in Glendale, Arizona.

20 2. Shawna Townsend ("Petitioner") owns Lot 177 in North Canyon
21 Ranch and is a member of Respondent.

22 3. On or about October 21, 2022, Petitioner filed a single-issue
23 petition with the Arizona Department of Real Estate ("Department") alleging that
24 Respondent had violated its Covenants, Conditions, and Restrictions ("CC&Rs") Section
25 4.3 Storage, Section 4.17 Motor Vehicles, and Community Guidelines 2007, stating that
26 she "found a legal loophole in the CC&Rs . . . for truck campers, and would appreciate it if
27 our HOA would abide by them."

28 4. Respondent filed a written answer to the petition, denying that it
29 had violated any CC&Rs or Community Documents. The Department referred the petition
30

1 to the Office of Administrative Hearings, an independent State agency, for an evidentiary
2 hearing.

3 5. A hearing was held on January 19, 2023. Administrative Notice
4 was taken of the agency record. Petitioner testified on her own behalf. Josey Perkins,
5 Respondent's Community Manager, testified on behalf of Respondent.

6 **REFERENCED CC&RS**

7 6. Section 4.3 of the CC&Rs provides as follows:

8 Storage. No exterior storage of any items of any kind shall be permitted in
9 the front yard of any Lot. These provisions shall apply by way of illustration
10 and without limitation, to woodpiles, camping trailers, boats, mobile homes
11 and unmounted pickup camper units. Also by way of illustration and without
12 limitation, no automobile, truck, or other vehicle, regardless of ownership,
13 age condition or appearance, shall remain on any Lot in any manner which
14 could be construed as being stored, neglected, abandoned or otherwise not
15 in frequent use.

16 7. Section 4.17 of the CC&Rs provides as follows:

17 Motor Vehicles. Motor Vehicles owned or in the custody of any Owner or
18 resident may be parked only in the garage or driveway located upon or
19 pertaining to such person's Lot. No buses, vans, motor homes, recreational
20 vehicles or trucks having a carrying capacity in excess of one (1) ton or
21 designed for commercial purposes shall be placed, allowed or maintained
22 upon any Lot except in areas attractively screened or concealed from view
23 of neighboring Lots and streets.

24 **REFERENCED COMMUNITY GUIDELINES**

25 8. Respondent's Architectural and Community Guidelines, Revised 2007,
26 provides in relevant part as follows:¹

27 **RECREATIONAL VEHICLES [UNCHANGED]**

28 No motor vehicle classed by the manufacturer rating as exceeding one ton,
29 or being a mobile home, travel trailer, tent trailer, trailer, camper shell,
30 detached camper, boat, boat trailer, hang glider, or other similar equipment
or vehicle, may be parked, stored, maintained, constructed, reconstructed
or repaired on any street or lot if visible from neighboring properties.

HEARING EVIDENCE

¹ See Respondent's Exhibit 4 at Community Rules.

1 9. Josey Perkins, Respondent's Community Manager, testified as to
2 Sections 6.5 and 6.7 of Respondent's Bylaws that authorize the enforcement of
3 Respondent's architectural guidelines:²

4 6.5. Duties. It shall be the duty of the Architectural Committee to consider
5 and act upon any and all proposals or plans submitted to it pursuant to the
6 terms of the Declaration, to adopt Architectural Committee Rules, to perform
7 other duties delegated to it by the Board, and to carry out all other duties
8 imposed upon it by the Declaration.

9 6.7 Architectural Committee Rules. The Architectural Committee may
10 adopt, amend and repeal, by unanimous vote or written consent, rules and
11 regulations. Said rules shall interpret and implement the Declaration by
12 setting forth the standards and procedures for Architectural Committee
13 review and the guidelines for architectural design, placement of buildings,
14 landscaping, color schemes, exterior finishes and materials and similar
15 features which are required to be used within the Property.

16 10. Ms. Perkins further referenced Respondent's CC&Rs Section 2.3
17 which sets forth the following:³

18 Association Rules. The Board may, from time to time and subject to the
19 provisions of this Declaration, adopt, amend and repeal rules and
20 regulations. The Association Rules may restrict and govern the use of any
21 area by any Owner, by the family of such Owner, or by any invitee, licensee
22 or lessee of such Owner except that the Association Rules may not
23 discriminate among Owners and shall not be inconsistent with this
24 Declaration, the Articles or Bylaws. Upon adoption, the Association Rules
25 shall have the same force and effect as if they were set forth in and were a
26 part of this Declaration.

27 11. Ms. Perkins also testified about Respondent's Rules Regarding the
28 Storing, Keeping or Parking of Recreational Type Vehicles, the effective date of which
29 was August 9, 2000.⁴ Those Rules state the following in pertinent part:⁵

30 These Rules pertain to the storing, keeping or otherwise parking of mobile
homes, travel trailers, tent trailers, campers, camper shells, recreational
vehicles, boats, boat trailers and other similar equipment (collectively
referred to as "Recreational Type Vehicles") within North Canyon Ranch.

² See Respondent's Exhibit 2.

³ *Id.*

⁴ See Respondent's Exhibit 5.

⁵ *Id.*

...

I. Storage of Recreational Type Vehicles In Front of Lots, Common Areas and Streets

No Recreational Type Vehicles shall be parked, stored, maintained or otherwise kept in a front yard of a Lot, in a driveway, in the Common Areas or on a street within North Canyon Ranch. Brief loading and unloading of Recreational Type Vehicles in the driveway or street of the applicable residence, such as that incidental to readying for a trip, vacation or excursion, shall not be deemed a violation. Parking for these aforementioned purposes will be reviewed on a case by case basis to determine if a violation has been committed. However, parking or storing any Recreational Type Vehicle in a driveway or street for such purposes of loading or unloading for greater than twenty-four consecutive hours within any seven (7) day period is prohibited, unless prior approval is requested and obtained from the Board of Directors.

12. Ms. Perkins testified that she conducts inspections for recreational vehicles in the community on Tuesdays at 8:30 a.m. In the event Ms. Perkins observes a recreational vehicle, she conducts a recheck on Thursday evenings. If the recreational vehicle continues to be observed, Ms. Perkins notes the violation and the homeowner is issued a violation notice.

13. Ms. Perkins testified that on October 21, 2021, during her weekly inspection, she became aware of Petitioner's recreational vehicle parked in Petitioner's driveway.⁶

14. On November 1, 2021, Ms. Perkins, on behalf of Respondent, issued a notice of violation to Petitioner.⁷ No fine was imposed, however, Petitioner was put on notice that if the violation was not corrected with fourteen (14) days, a \$30.00 fine would be imposed.⁸ The notice provided a link for Petitioner to inquire about or appeal the violation notice.⁹

⁶ See Respondent's Exhibit 7.

⁷ See Respondent's Exhibit 8.

⁸ *Id.*

⁹ *Id.*

1 15. On January 17, 2022, another violation notice was issued to
2 Petitioner by Respondent.¹⁰ Again, no fine was imposed, however, Petitioner was put on
3 notice that if the violation was not corrected with fourteen (14) days, a \$30.00 fine would
4 be imposed.¹¹ The notice provided a link for Petitioner to inquire about or appeal the
5 violation notice.¹²

6 16. On January 17, 2022, Petitioner filed an appeal to the Board.¹³

7 17. On February 14, 2022, Respondent denied Petitioner's appeal and
8 gave Petitioner until February 17, 2022 to remove the "camper from view" and noticed
9 Petitioner that if the violation was not corrected, a fine would be imposed.¹⁴

10 18. On June 30, 2022, another violation notice was issued to Petitioner
11 by Respondent.¹⁵ Again, no fine was imposed, however, Petitioner was put on notice that
12 if the violation was not corrected with fourteen (14) days, a \$30.00 fine would be
13 imposed.¹⁶ The notice provided a link for Petitioner to inquire about or appeal the violation
14 notice.¹⁷

15 19. On August 3, 2022, Respondent issued a final violation letter to
16 Petitioner and assessed a \$30.00 fine, with the notice that an additional \$55.00 fine would
17 be imposed if the "trailer" was not moved out of public view within fourteen (14) days.¹⁸

18 20. Ms. Perkins referenced in her testimony the Meeting Minutes from
19 the August 16, 2022 Executive Session Meeting during which Petitioner appeared before
20 the Board to discuss the "camper shell violations."¹⁹ Petitioner's appeal was denied.²⁰

21 21. On September 22, 2022, in response to email correspondence with
22 Petitioner, Ms. Perkins explained to Petitioner that the Board denied her appeal because
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24 ¹⁰ See Respondent's Exhibit 9.

25 ¹¹ *Id.*

26 ¹² *Id.*

27 ¹³ See Respondent's Exhibit 10.

28 ¹⁴ *Id.*

29 ¹⁵ See Respondent's Exhibit 11.

30 ¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Respondent's Exhibit 12.

¹⁹ See Respondent's Exhibit 14.

²⁰ *Id.*

1 she was in violation of the Community Guidelines dated September 2007, in regard to
2 Recreational Vehicles.²¹

3 22. Petitioner asserted at hearing that the item at issue is a truck
4 camper, and argued that there is a “legal loophole” in the CC&Rs and Community
5 Guidelines concerning truck campers because a truck camper is not a Recreational
6 Vehicle or a trailer or a camper shell, and that because her truck camper is attached and
7 mounted to a vehicle, it is not prohibited. Petitioner’s argument is one of semantics.

8 23. However, during the course of the hearing, Petitioner
9 acknowledged and contradicted her initial assertion, by stating that a truck camper
10 actually is a recreational vehicle. Petitioner further acknowledged that prior to purchasing
11 the camper on May 10, 2021, she did not ask Respondent whether such was permitted to
12 be parked in Petitioner’s driveway, but rather, she inquired of other homeowners.

13 24. Petitioner submitted into evidence her purchase receipt for the truck
14 camper and a photograph depicting the difference between a truck camper and a camper
15 shell.²²

16 **CONCLUSIONS OF LAW**

17 1. A.R.S. § 32-2199.01 permits a homeowner to file a petition with the
18 Department for a hearing concerning a planned community association’s alleged
19 violations of the planned community documents. This matter lies within the Department’s
20 jurisdiction. That statute provides that such petitions will be heard before the Office of
21 Administrative Hearings.

22 2. Petitioner bears the burden of proof to establish that Respondent violated
23 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.²³
24 Respondent bears the burden to establish affirmative defenses by the same evidentiary
25 standard.²⁴

26
27 ²¹ See Respondent’s Exhibit 13.

28 ²² See Petitioner’s Exhibits 2 and 3 respectively.

29 ²³ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
(1952).

30 ²⁴ See A.A.C. R2-19-119(B)(2).

1 3. “A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not.”²⁵ A preponderance of the evidence is
3 “[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
7 the other.”²⁶

8 4. A.R.S. § 33-2102(18) defines “Recreational vehicle” as a vehicular type unit
9 that is any of the following:

10

11 (e) A portable truck camper constructed to provide temporary living quarters
12 for recreational, camping or travel use and consisting of a roof, floor and
13 sides designed to be loaded onto and unloaded from the bed of a pickup
14 truck.

15 5. Section 4.3 of the CC&Rs provides that there shall be “*no exterior storage of*
16 *any items of any kind*” . . . “*in the front yard of any Lot.*”²⁷

17 6. Respondent’s Architectural and Community Guidelines, Revised 2007,
18 provides that “no motor vehicle classed by the manufacturer rating as exceeding one ton,
19 or being a mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper,
20 boat, boat trailer, hang glider, *or other similar equipment* or vehicle, may be parked,
21 stored, maintained, constructed, reconstructed or repaired on any street or lot if visible
22 from neighboring properties.”²⁸

23 7. Respondent’s Rules Regarding the Storing, Keeping or Parking of
24 Recreational Type Vehicles, the effective date of which was August 9, 2000, state in
25 pertinent part:²⁹

26 These Rules pertain to the storing, keeping or otherwise parking of mobile
27 homes, travel trailers, tent trailers, campers, camper shells, *recreational*

28 ²⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ²⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

²⁷ Emphasis added.

²⁸ Emphasis added.

²⁹ Emphasis added.

vehicles, boats, boat trailers and other similar equipment (collectively referred to as "Recreational Type Vehicles") within North Canyon Ranch.

. . .

I. Storage of Recreational Type Vehicles In Front of Lots, Common Areas and Streets

No Recreational Type Vehicles shall be parked, stored, maintained or otherwise kept in a front yard of a Lot, in a driveway, in the Common Areas or on a street within North Canyon Ranch. . . .

8. Petitioner acknowledged at hearing that her "truck camper" is a recreational vehicle. Moreover, the language contained in the above-cited provisions unequivocally state multiple times, "*other similar equipment.*" Petitioner's "truck camper" clearly falls within such category.

9. Therefore, based on a review of the credible and relevant evidence of record, it is held that Petitioner failed to establish by a preponderance of the evidence that Respondent violated the provisions of CC&Rs Section 4.3 Storage, 4.17 Motor Vehicles, and Community Guidelines 2007.

ORDER

IT IS ORDERED that no action is required of Respondent in this matter and that Petitioner's petition is dismissed.

NOTICE

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

Done this day, February 7, 2023.

/s/ Sondra J. Vanella
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile February 7, 2023 to:

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