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No. 23F-H032-REL

ADMINISTRATIVE LAW JUDGE DECISION

Leisure World Community Association,
Respondent.

APPEARANCES: Michael Jahr (“Petitioner”) appeared on his own behalf. Daniel Collier appeared on behalf of Leisure World Community Association (“Respondent” Association”).

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").

BACKGROUND AND PROCEDURE

2. On or about December 16, 2022, Petitioner filed a single-issue petition with the Department which alleged that the Association violated Arizona Revised Statutes (“ARIZ. REV. STAT.”) §§ 33-439 and 33-1816(a-b) by refusing Petitioner the ability to “utilize Solar means to reduce [Petitioner’s] energy consumption.”¹ Under the Relief Requested section of the petition, Petitioner checked boxes for an Order from the

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Department for Respondent to abide by the identified statutes and governing community documents, though no documents were referenced.²

3. On or about December 27, 2022, Respondent returned its ANSWER to the Department whereby it denied all complaint items in the petition.³ In an attached letter, in pertinent parts, Respondent provided the following:

[Complainant believes he should be allowed to put up a clothesline in his yard, which is against HOA Rules and Regulations. He cites ARS 33-1816, which refers to solar energy devices. His belief is that a clothesline meets the definition of a solar energy device, as defined in ARS 44-1761.

A clothesline does not fit under the definitions found in ARS 44-1761 and therefore, ARS 33-439 would not apply. A clothesline is not a 'solar energy device' and [Respondent] may prohibit clotheslines if so desired.⁴

(All errors in original.)

4. Per the NOTICE OF HEARING, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing on February 27, 2023, regarding the following issue:

Petitioner states that Respondent violated ARS 33-1816 after "Respondent denied Petitioner the right to utilize Solar means to reduce [Petitioner's] energy consumption."⁵ [sic]

THE PARTIES AND GOVERNING DOCUMENTS

5. Respondent is an age restricted homeowners' association whose members own properties in a residential real estate development located on a Maricopa County island, within the City of Mesa, Arizona. Membership for the Association is compromised of the Leisure World subdivision.

6. Petitioner is a Leisure World subdivision property owner and member of the Association.

7. The Association is governed by its CC&Rs and overseen by a Board of Directors ("the Board"). The CC&Rs empower the Association to control certain aspects of

² *Id.*

³ See Department's electronic file at Response to Petition.pdf.

⁴ *Id.*

⁵ See Department's electronic file at 23F-H032-REL Notice of Hearing.pdf.

1 property use within the development. When a party buys a residential unit in the
2 development, the party receives a copy of the CC&Rs and agrees to be bound by their
3 terms. Thus, the CC&Rs form an enforceable contract between the Association and each
4 property owner.

- 5 a. The Association is managed by its own in-house management staff
6 ("Management Staff"), which is comprised of multiple divisions.

7 8. On or about March 19, 2007, the Association's CC&Rs, for Plat 11, were
8 recorded with the Maricopa County Recorder's Office.⁶

9 HEARING EVIDENCE

10 9. Petitioners testified on their own behalf and submitted Exhibits 4, 5, and 7.
11 Respondent presented the testimony of Regis Salazar and submitted Exhibits 1 through
12 6. The Department's electronic file was also admitted into the record. The substantive
13 evidence of record is as follows:

- 14 a. In Fall of 2018, Petitioner purchased residential property located at 893
15 Leisure World Mesa, AZ 85206, within the Association.
16 i. Petitioner received the Association's governing documents at the
17 close of escrow.
18 b. On August 06, 2022, Petitioner asked Management Staff for permission to
19 put a sleeve⁷ into the ground in his backyard that would be compatible with a
20 flag, umbrella, and/or clothesline.⁸
21 c. Later that same date, Management Staff replied to Petitioner that it was
22 unable to grant authorization for an umbrella or sleeve.
23 d. On August 07, 2022, Petitioner submitted a second application to
24 Management Staff with a generic request to place an in-ground sleeve in his
25 backyard.⁹

26
27
28 ⁶ See Petitioner Exhibit 1.

29 ⁷

⁸ See Department's electronic file at Petition.pdf.

30 ⁹ *Id.*

- 1 e. On August 15, 2022, Petitioner was granted LWCA AAC Permit No. 893 for
2 a “flag pole installation sleeve” within the permitted setback allowance.¹⁰
- 3 f. In or around late-September 2022, Petitioner installed the sleeve, and used
4 it to erect a flag on his property. The sleeve was used to hold a flag for about
5 1 week, after which Petitioner switched the sleeve’s use for the purpose of
6 installing a clothesline.
- 7 g. On October 14, 2022, Petitioner submitted an appeal of his August 06,
8 2022, request to install a sleeve for the purpose of using a clothesline to the
9 Board.
- 10 h. In response, on October 25, 2022, Management Staff advised Petitioner
11 that per its attorney, that ARIZ. REV. STAT. §§ 44-1761 and 33-439 were
12 inapplicable to the Association, a clotheslines was not a “solar energy
13 device,” and that the Association could prohibit the use of clotheslines within
14 the community if it so desired.¹¹
- 15 i. Later that same date, Petitioner advised Management Staff that he wished
16 to present his appeal before the Board.
- 17 i. On October 28, 2022, the Board granted Petitioner’s request, and
18 scheduled time after a meeting scheduled November 01, 2022, for
19 Petitioner to present his appeal in Executive Session.
- 20 j. On October 31, 2022, the Association issued an ARCHITECTURAL CONTROL
21 COURTESY VIOLATION NOTICE (“VIOLATION NOTICE”) to Petitioner, which
22 provided, in pertinent parts, that Petitioner’s clothesline constituted a
23 violation of the Association’s Rules & Regulations 2-304(D), and that
24 Petitioner had 10 calendar days to bring his property back into
25 compliance.¹²
- 26 k. On November 01, 2022, Petitioner attended an Executive Session of the
27 Board whereby Petitioner was permitted to present his clothesline appeal.

28 ¹⁰ *Id.*

29 ¹¹ *Id.*

30 ¹² *Id.*

Afterward, the Board affirmed its prior denial and VIOLATION NOTICE. Petitioner returned home that evening and removed the clothesline from the sleeve.

CLOSING ARGUMENTS

10. In closing, Respondent argued that clotheslines are prohibited per the Association's governing documents, and opined that it did not meet the statutory definition of a "solar energy device." As such, Respondent asked that Petitioner's petition be dismissed.

11. In closing, Petitioner opined that the legislature intended that homeowners be permitted to use clotheslines, and that notwithstanding the Association's Rules & Regulations, the Association's refusal to grant Petitioner permission to "utilize solar means" amounted to a violation of ARIZ. REV. STAT. § 33-1816. As such, Petitioner asked that his petition be granted, and that he be reimbursed his filing fee.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a planned community association.

2. The owner or association may petition the department for a hearing concerning violations of community documents or violations of the statutes that regulate planned communities as long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

3. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.¹³

4. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated a community document.¹⁴

¹³ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

¹⁴ See ARIZ. ADMIN. CODE R2-19-119.

1 5. “A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not.”¹⁵ 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.”¹⁶

8 6. In Arizona, when construing statutes, we look first to a statute's language as
9 the best and most reliable index of its meaning. If the statute's language is clear and
10 unambiguous, we give effect to that language and apply it without using other means of
11 statutory construction, unless applying the literal language would lead to an absurd result.
12 Words should be given “their natural, obvious, and ordinary meaning.”¹⁷

13 7. Statutes should be interpreted to provide a fair and sensible result.
14 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
15 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable
16 construction on statutes.”).

17 8. When the legislature uses a word or words in one section of a statute, but
18 not another, the tribunal may not read those words into the section where the legislature
19 did not include them.¹⁸ Unless defined by the legislature, words in statutes are given their
20 ordinary meanings.¹⁹

21 9. Each word, phrase, clause, and sentence of a statute or rule must be given
22 meaning so that no part will be void, inert, redundant, or trivial.²⁰

23 10. Planned communities are regulated by ARIZ. REV. STAT. Title 33, Chapter
24 16, Article 1.

25 11. ARIZ. REV. STAT. § 33-439(a) provides that any covenant, restriction or
26 condition contained in any deed, contract, security agreement or other instrument

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

28 ¹⁶ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

29 ¹⁷ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

30 ¹⁸ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

¹⁹ *Id.*

²⁰ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 affecting the transfer or sale of, or any interest in, real property which effectively prohibits
2 the installation or use of a solar energy device as defined in section 44-1761 is void and
3 unenforceable.

4 12. ARIZ. REV. STAT. § 33-1808(a) provides that, notwithstanding any provision
5 in a community document, an association shall not prohibit the outdoor front yard or
6 backyard display of a federal, state, tribal, Gadsden, or prisoner of war/missing in action
7 flag.

8 13. ARIZ. REV. STAT. § 33-1816(a-b) provides that, notwithstanding any
9 provision in a community document, an association shall not prohibit the installation of or
10 use of a solar energy device as defined in section 44-1761, and may adopt reasonable
11 rules regarding placement of solar energy devices if those rules do not prevent
12 installation, or impair the functioning of the device or restrict its use or cost efficiency.

13 14. ARIZ. REV. STAT. § 44-1761(8) defines “solar energy device”²¹ as follows:

14 Means a system or series of mechanisms that is designed primarily to provide
15 heating, to provide cooling, to produce electrical power, to produce mechanical
16 power, to provide solar daylighting or to provide any combination of the foregoing
17 by means of collecting and transferring solar generated energy into such uses
18 either by active or passive means. Such systems may also have the capability of
19 storing such energy for future utilization. Passive systems shall clearly be designed
20 as a solar energy device such as a trombe wall and not merely a part of a normal
21 structure such as a window.²²

22 15. Association Rules & Regulations 2-304(D) provides that, “No clotheslines of
23 any kind shall be permitted outside [a residence]. Clothes or items to dry shall not be hung
24 to dry in any location visible from outside [a residence].”

25 ²¹ Pursuant to ARIZ. REV. STAT. § 44-1761(2) “solar energy device” includes “distributed energy generation
26 system” which is defined as follows:

27 Means a device or system that is used to generate or store electricity, that has an electric delivery
28 capacity, singly or in connection with other similar devices or systems, greater than one kilowatt or
29 one kilowatt-hour, and that is primarily for on-site energy consumption. Does not include an electric
30 generator that is intended for occasional use.

²² BLACK’S LAW DICTIONARY does not define “clothesline” or “solar energy device.” Per Merriam Webster,
however, “system” means a regularly interacting or interdependent group of items forming a unified whole,
and “mechanism” means a piece of machinery or a process, technique, or system for achieving a result.

16. Here, none of the material facts are in dispute. The sole determination to be addressed is whether the Association acted within its lawful authority to deny Petitioner permission to erect a clothesline on his property. This Tribunal finds that it did.

17. ARIZ. REV. STAT. § 33-439(a) is inapplicable to this matter.

18. Based on the relevant and credible evidence of record, including the aforementioned germane statutory definitions, and lacking any binding citations offered from a court of competent jurisdiction, the Tribunal finds that a clothesline is not a solar energy device. Moreover, Petitioner knew or should have known that clotheslines were prohibited by the Association under Rules & Regulations 2-304(D). Nonetheless, when he asked for permission to put up a clothesline, Petitioner's request was denied by Respondent. Respondent did, however, grant Petitioner's sleeve request with the explicit instruction that its use was for the purpose of flag display, in line with ARIZ. REV. STAT. § 33-1808(a). As such, the Association's October 31, 2022, VIOLATION NOTICE was not issued unlawfully or in error.

19. Because Petitioner did not sustain his burden of proof by a preponderance of the evidence that the Association violated ARIZ. REV. STAT. § 33-1816, his petition must be denied.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition be denied.

IT IS FURTHER ORDERED that Respondent does not owe Petitioner any reimbursement(s) for fees incurred in association with the filing of this petition.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

NOTICE

Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04.

1 Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter
2 must be filed with the Commissioner of the Arizona Department of Real Estate
3 within 30 days of the service of this ORDER upon the parties.

4 Done this day, March 14, 2023.

5 Office of Administrative Hearings

6 /s/ Jenna Clark
7 Administrative Law Judge
8

9
10 Transmitted electronically to:

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