IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Barbara J. Ryan Petitioner vs.

Dragoon Mountain Ranch Phase I Meadows Property Owners Association Respondent No. 23F-H035-REL

ADMINISTRATIVE LAW JUDGE DECISION

HEARING: March 27, 2023

<u>APPEARANCES</u>: Petitioner Barbara J. Ryan (Petitioner) appeared on behalf of herself. Jody Corrales, Esq. appeared on behalf of Respondent Dragoon Mountain Ranch Phase I Meadows Property Owners Association (Respondent).

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

FINDINGS OF FACT

- 1. On or about December 23, 2022, Petitioner filed a petition with the Arizona Department of Real Estate (Department) alleging that Respondent had violated Arizona Revised Statutes (A.R.S.) § 33-1804, A.R.S. § 33-1318, and Respondent's Bylaws sections 7.1, 7.2, 12.1 12.3, when it failed to hold an annual members meeting in two years. Petitioner alleged that Respondent ignored members' petitions and requests for a meeting.
 - 2. Petitioner paid \$500.00 for the petition¹.
- 3. The Department referred the petition to the Office of Administrative Hearings for an evidentiary hearing.
- 4. On February 15, 2023, the Department issued a Notice of Hearing setting the matter for hearing on March 27, 2023 at 1:00 p.m. The Notice of Hearing provided that the issue set for determination was whether Respondent violated A.R.S. § 33-1804,

¹ The petition included other allegations including, but not limited to, the Board failure to respond to requests for a special meeting of members and/or a meeting to remove directors from the Board. However, Petitioner has paid for only one issue.

A.R.S. § 33-1318, and Respondent's Bylaws sections 7.1, 7.2, 12.1 – 12.3 by "...not [holding] a member meeting in two years, members written petitions and request for a meeting have been ignored by the [Respondent.]"

5. Article 7.1 of Respondent's Bylaws provides, in relevant part, as follows:

Notwithstanding any provision in the community documents, an annual meeting of the Members shall be held at least once a year.

The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with the Bylaws does not affect the validity of any corporate action.

Emphasis Added.

- 6. At hearing, Petitioner testified on behalf of herself. Respondent presented the testimony of Dorothy Marie.
- 7. It was undisputed that Respondent did not hold an annual meeting of the members from March of 2020 to the time of the hearing. Respondent's counsel stated that there were no legal defenses to Respondent's failure to hold a board meeting.

CONCLUSIONS OF LAW

- 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.² This matter lies with the Department's jurisdiction.
- 2. Petitioner bears the burden of proof to establish that Respondent violated on its CC&Rs by a preponderance of the evidence.³ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁴

² See ARIZ. REV. STAT. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs

³ 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, 372, 249 P.2d 837 (1952).

⁴ See A.A.C. R2-19-119(B)(2).

- 3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not." A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."
- 4. The preponderance of the evidence shows that Respondent violated section 7.1 of its Bylaws when it failed to hold an annual Meeting of the members in 2021 and 2022.

ORDER

IT IS ORDERED that Petitioner be deemed the prevailing party.

IT IS FURTHER ORDERED that Respondent Dragoon Mountain Ranch Phase I Meadows Property Owners Association must pay to Petitioner her filing fee of \$500.00 within thirty days of receipt of this Order.

IT IS FURTHER ORDERED Respondent is directed to comply with the requirements of section 7.1 of its Bylaws going forward.

No Civil Penalty is found to be appropriate in this matter.

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, April 17, 2023.

/s/ Velva Moses-Thompson Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile April 17, 2023 to:

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

⁶ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

Susan Nicolson SNicolson@azre.gov AHansen@azre.gov vnunez@azre.gov djones@azre.gov labril@azre.gov Jody A Corrales jcorrales@dmyl.com Barbara Ryan barbryan1@hotmail.com By: OAH Staff