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ADMINISTRATIVE LAW JUDGE DECISION

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

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

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

5
6 **Notwithstanding any provision in the community**
7 **documents, an annual meeting of the Members shall be**
8 **held at least once a year.**

9
10 The failure to hold an annual or regular meeting at a time
11 stated in or fixed in accordance with the Bylaws does not
12 affect the validity of any corporate action.

13 Emphasis Added.

14 6. At hearing, Petitioner testified on behalf of herself. Respondent presented
15 the testimony of Dorothy Marie.

16 7. It was undisputed that Respondent did not hold an annual meeting of the
17 members from March of 2020 to the time of the hearing. Respondent's counsel stated
18 that there were no legal defenses to Respondent's failure to hold a board meeting.

19 CONCLUSIONS OF LAW

20 1. A.R.S. § 32-2199(B) permits an owner or a planned community
21 organization to file a petition with the Department for a hearing concerning violations of
22 planned community documents under the authority Title 33, Chapter 16.² This matter
23 lies with the Department's jurisdiction.

24 2. Petitioner bears the burden of proof to establish that Respondent violated
25 on its CC&Rs by a preponderance of the evidence.³ Respondent bears the burden to
26 establish affirmative defenses by the same evidentiary standard.⁴

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

29 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
30 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ See A.A.C. R2-19-119(B)(2).

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

8 4. The preponderance of the evidence shows that Respondent violated
9 section 7.1 of its Bylaws when it failed to hold an annual Meeting of the members in
10 2021 and 2022.

11 **ORDER**

12 **IT IS ORDERED** that Petitioner be deemed the prevailing party.

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

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

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

19 **NOTICE**

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

25 Done this day, April 17, 2023.

26 /s/ Velva Moses-Thompson
27 Administrative Law Judge

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

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

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

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