

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 23F-H042-REL

4 Quail Creek Villas Association, Inc.
5 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 vs.

7
8 Randall & Gisela White
9 Respondent

10 **HEARING:** April 27, 2023 at 1:00 PM.

11 **APPEARANCES:** Michael Shupe, Esq. appeared on behalf of the Quail Creek
12 Villas Association, Inc. ("Petitioner") with Lori Woullet, Diane Webber, and Lynn Birleffi as
13 witnesses. Randall White ("Respondent") appeared on behalf of himself and his wife,
14 Gisela White (collectively as "Respondents"), whose appearance was waived.

15 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

16
17 After review of the hearing record in this matter, the undersigned Administrative
18 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
19 ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

20 **FINDINGS OF FACT**

21 **THE PARTIES AND GOVERNING DOCUMENTS**

22 1. Petitioner is a homeowners' association whose members own properties in
23 the Quail Creek Villas residential real estate development located in Tucson, Arizona.¹
24 Membership for the Association is comprised of Quail Creek Villas homeowners. The
25 Association is governed by its Covenants, Conditions, and Restrictions ("CC&Rs") and
26 overseen by a Board of Directors ("the Board"). The Association is also regulated by Title
27 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

28 a. The Association is managed by Cadden Community Management
29 ("Cadden").

30 ¹ See Department's electronic file at Arizona Corporate Commission.pdf.

2. Respondent is a Quail Creek Villas subdivision property owner and member of the Association.

BACKGROUND AND PROCEDURE

3. The Department is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

4. On or about February 08, 2023, Petitioner filed a single issue petition with the Department which alleged, overall, that Respondents knowingly and intentionally violated CC&Rs Section 3(j) by failing to obtain express written permission from the Association prior to installing tile on their front porch.²

5. On February 10, 2023, the Association tendered a \$500.00 filing fee to the Department.³

6. On February 10, 2023, the Department issued a HOA NOTICE OF PETITION to Respondents.⁴

7. On March 02, 2023, Respondent returned its ANSWER to the Department whereby they denied all complaint items in the underlying petition.⁵ By that same date, Respondents submitted the following, in pertinent parts, to the Department:

The [petition] alleges we installed an exterior alteration without following required approval as spelled out in [Petitioner's] CCRs. The exterior alteration is a ceramic tile surface added to a 5x7 enclosed portal entranceway over the bare concrete surface. Not visible from the street, and in our view not an appearance alteration. The CCRs [that] were provided as part of the closing documents during our purchase in [January] 2022[,] differ from the CCRs which [Petitioner] now asserts are required for our compliance. In fact of detail, the operative page and paragraph (3)[j] are absent from our Contact set of CCR documents.⁶

8. On March 02, 2023, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing

² See Department's electronic file at Petition.pdf.

³ See Department's electronic file at Receipt.pdf.

⁴ See Department's electronic file at Notice of Petition.pdf.

⁵ See Department's electronic file at Notice of Petition Page 3.pdf.

⁶ See Department's electronic file at Response Received.pdf.

on April 27, 2023. Per the NOTICE OF HEARING⁷ the issue(s) to be determined at hearing are as follows:

Petitioner states that Respondent has violated the Section 3(j) of the CC&Rs by having tile installed at the entryway to the dwelling unit on the subject property without the prior written approval of the Petitioner. The Petitioner states, The [Association] gave Respondents until January 31st, 2023 to remove tile but the Respondent ... had additional tile delivered to the subject property and placed from the entryway along the walkway to the driveway.”

(All errors in original.)

HEARING EVIDENCE

9. Petitioner called Lori Woullet, Diane Webber, and Lynn Birleffi as witnesses and submitted Exhibits 1-3. Respondents called Randall White as a witness. The Department’s electronic file, including the NOTICE OF HEARING, was also admitted into the hearing record. The substantive evidence of record is as follows:

a. On or about December 30, 2021, prior to the close of escrow on 865 N. Broken Hills Dr. Green Valley, AZ 85614, Respondents were provided with a disclosure of community documents for the Quail Creek Villas homeowners association.⁸ The disclosure instructed Respondents to view and download the documents from the internet, and return a signed acknowledgement of receipt within fourteen (14) days.⁹ By signing, Respondents affirmed that they “hereby acknowledge that the Declaration, Bylaws, and Rules of the Association constitute a Contract between the Association and [Respondents].”¹⁰

i. The annotated CC&Rs provided to Respondents were missing enumerated pages 4 and 6.¹¹ Instead, Respondents received pages 3 and 5 as duplicates.¹²

⁷ See Department’s electronic file at Notice of Hearing.pdf.

⁸ See Department’s electronic file at Villas Docs Homewise letter Copy.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Department’s electronic file at CC&Rs annotated.pdf.

¹² *Id.*

1 ii. Respondents did receive page 7 of the annotated CC&Rs, which
2 notes in pertinent part, as follows:

3 **Each Owner of a Villas Lot understands, acknowledges and**
4 **agrees that by acquiring an interest in a Lot in which**
5 **landscaping and exterior maintenance is performed or arranged**
6 **by the Villas Association, such Owner is giving up rights to**
7 **control the appearance and use of the outside areas of such**
8 **Owner's Villas Lot.**
9 *(Emphasis in original.)*

- 10 b. In Spring of 2022, after learning that the Association would not perform
11 exterior surface cleaning for tire marks on Respondents' driveway, and
12 stains on their front walkway and porch, Mr. White advised Cadden that
13 Respondents had "assembled tile onto our porch in a removable fashion"
14 which "covered the damaged concrete temporarily, and can be removed in a
15 few minutes to permit work on the concrete."¹³ Mr. White further advised that
16 Respondents were "entertaining having that tile work made permanent, as it
17 creates an improvement in both appearance and durability/cleanability."¹⁴
18 [sic]
- 19 c. On an unknown date, Cadden responded to Mr. White and advised that "[A]
20 request for permission from [Petitioner] will need to be submitted and
21 approved by the board at the next in-person meeting to have that tile in the
22 entryway. I have attached the form to fill out and return."¹⁵
- 23 d. On May 23, 2022, Respondents withdrew their cleaning request whereby
24 Mr. White noted, "I have completed by dry laying of the tiles and they are in a
25 state that makes cleaning the underlying concrete un-necessary."¹⁶ [sic]
- 26 e. On May 26, 2022, Mr. White reiterated that "the tile is placed and not
27 permanent (so think, like a mat)" and that Respondents were "not definite
28 about the tile at this point."¹⁷

29 ¹³ See Petitioner Exhibit 1, page 1.

30 ¹⁴ *Id.*

¹⁵ See Petitioner Exhibit 1, page 3.

¹⁶ *Id.*

¹⁷ See Petitioner Exhibit 1, page 4.

- 1 f. On May 27, 2022, Mr. White advised Cadden that he interpreted CC&Rs
2 Section 3(j) that “there is not any owner requirement to submit a request for
3 ‘Approval of Construction’ AND no duty nor empowerment of [the
4 Association] to judge whether to approve such a request or not. It is simply
5 out of scope or out of bounds.”
- 6 g. On an unknown date, Cadden warned Respondents, “I am advising you
7 NOT to make outside modifications to your property unless you receive
8 written permission from [Petitioner] first.”¹⁸ (*Emphasis in original.*)
- 9 h. On June 03, 2022, Petitioner was advised that Respondents had
10 permanently laid and grouted tile on their porch.¹⁹
- 11 i. On June 03, 2022, Mr. White proclaimed to Cadden that the Association
12 “does not have authority to control what I do with my driveway,” and that
13 they “abrogated their duty” by refusing to clean it.²⁰
- 14 j. On June 16, 2022, legal counsel for the Association wrote the following to
15 Respondents, in pertinent parts:

16 The Board of Directors has become aware that you have had tile installed at
17 the entryway to your house. This was done without the Board’s prior written
18 approval and, therefore, is a violation of Section 3(j) of the CC&Rs.
19 According to Arizona law, the CC&Rs are a contract between each Lot
20 Owner and the Association; therefore, you are in breach of contract. There
21 are no other tiled entryways in Quail Creek Villas; therefore, this exterior
22 modification will not be approved by the Board. Please have the entryway to
23 your house restored to its original condition within 60 days of the date of this
24 letter (i.e., by August 16, 2022). A \$250.00 fine will be imposed on you for
25 completion of an exterior modification without ALC approval. You have 21
26 calendar days from the date of this letter to request a hearing from the Board
27 before this fine is put on your account. The purpose of the hearing is to give
28 you an opportunity to present any reasons you have why the fine should not
29 be imposed. If you do not request a hearing, the fine will be due and payable
30 on July 8, 2022.

In accordance with the Arizona Planned Communities Act [Arizona Revised
Statutes §33-1803], if you require additional information or dispute the

¹⁸ See Petitioner Exhibit 1, page 6.

¹⁹ See Petitioner Exhibit 1, page 9-10.

²⁰ See Petitioner Exhibit 1, page 6.

1 information in this letter, you may respond to me in writing within 21
2 calendar days of the date of this letter (i.e., by July 8, 2022). Your response
3 must be sent via certified mail to the office address shown on the previous
4 page. Also, you may dispute this notice of violation by filing a petition for an
5 administrative hearing on this matter with the Arizona Department of Real
6 Estate pursuant to A.R.S. §41-2198.01.²¹

7
8 k. On July 12, 2022, Mr. White replied, in pertinent part, to allege that his close
9 of escrow documentation did not include CC&Rs containing the 3(j)
10 provision, thus Respondents “have no actionable obligation to comply.”²²
11 Mr. White also noted that “a rug has been now placed upon the entrance
12 tiles.”²³ [sic]

13 l. On August 18, 2022, legal counsel for the Association replied as follows to
14 Respondents, in pertinent parts:

15 However, the pages of the CC&Rs are numbered and it was obvious that
16 page 6 was missing. Therefore, you cannot rely on this inadvertent error
17 because the missing page was readily available to you upon request. Also,
18 the rug you have placed at the end of the entryway does not cover the tile
19 and is not an adequate remedy for your violation.

20 My letter dated June 16, 2022 gave you 60 days (until August 16, 2022) to
21 remove the tile and have the entryway restored to its original condition. If the
22 work was not done, on September 1, 2022, a monetary penalty in the
23 amount of \$250.00 will become due and payable for installing the tile without
24 Board approval. An additional monetary penalty in the amount of \$300.00
25 will be imposed on October 1, 2022 and monthly thereafter (on the 1st of the
26 month) for each month or portion of a month that the tile remains in your
27 entryway.

28 You may request a hearing with the Board to present any reasons you have
29 why the monetary penalties should not be imposed. Otherwise, the
30 monetary penalties will be due and payable as stated in this letter.²⁴

m. On August 28, 2022, Respondents responded whereby Mr. White reiterated
that compliance was not due, in large part, because the copy of CC&Rs

²¹ See Petitioner Exhibit 1, page 12.

²² See Petitioner Exhibit 1, page 14.

²³ *Id.*; see also page 28.

²⁴ See Petitioner Exhibit 1, page 16.

1 Respondents received at closing were incomplete, arguing “At our closing
2 and presently, I have no duty to comply with those documents. I have no
3 reason nor duty to *quality inspect* those documents at closing. Documents
4 were represented and taken as official, and in my estimation remain official
5 and ‘contract.’ Mr. White continued that because Respondents were out of
6 state, it was not logistically possible for them to comply with the demand to
7 remove the tile by Petitioner’s proposed deadline. Mr. White also opined,
8 given his former career as an engineer, that tile removal would “damage the
9 concrete substrate” and “subsequently require surface repair.” Mr. White
10 also opined that his rug remedy was a sufficient form of settlement, despite
11 the Association’s contrary belief.²⁵

- 12 n. On October 11, 2022, legal counsel for the Association replied as follows to
13 Respondents, in pertinent parts:

14 [The Association’s] Rules have been in effect since 2020 [sic] and,
15 therefore, you also took title subject to the Rules, which clearly set forth the
16 architectural review requirement for any exterior modifications.
17 Furthermore, the Association gave you ample notice of your violation and an
18 opportunity to cure the violation. Therefore, at this point, even if this
19 argument has legal merit, which it does not, it is inapplicable because you
20 have adequate notice from the Association of your violation and the
21 requirement to restore your entryway to its original condition.

22 In view of your return to Arizona in November 2022, you have until January
23 31, 2023 [sic] to remove the tile and have the entryway restored to its
24 original configuration and material. You have until November 10, 2022, to
25 communicate to me your intent to comply with this requirement for
26 restoration. If you do not agree in writing by November 10, 2022, the Board
27 will proceed to impose a monetary penalty of \$250.00 for your failure to get
28 needed approval for the tiled entryway. In addition, beginning on November
29 15, 2022 and monthly thereafter (on the 15th of the month) a monetary
30 penalty of \$300.00 will be imposed for each month or portion of a month that
the tile remains in your entryway. You have not asked for a hearing by the
Board to dispute these penalties and you have until November 10, 2022, in
which to do so.

²⁵ See Petitioner Exhibit 1, pages 18-19.

1 You have offered “technical information” and have requested that the tile is
2 left as it is with some monetary consideration on your part. This request is
3 denied. You remain in violation of the Association’s community documents
4 unless you meet the requirements.²⁶

- 5 o. On October 21, 2022, legal counsel for the Association advised
6 Respondents as follows, in pertinent parts:

7 The Association’s Board of Directors and Architectural Committee have
8 determined that the tiled entryway that you installed without approval needs
9 to be removed and restored. You simply need to adhere to the requirements
10 in my October 11th letter. If you do not, monetary penalties will be levied
11 against you and the Association could take legal or administrative action
12 against you to enforce its community documents.

13 The hearing you are being offered is to give the reasons you may have why
14 the Board should not impose monetary penalties on you as stated in my
15 October 11th letter. Your offer to meet with the Board to further negotiate
16 your insistence on keeping the tiled entryway is denied.

17 Furthermore, your stated defense to the Association’s enforcement has not
18 been accepted by the Association. The fact that the community documents
19 you received when you purchased your dwelling unit had missing pages
20 does not excuse you from the rules and restrictions appearing on the
21 allegedly missing pages.²⁷

- 22 p. Between November 07, 2022, and November 21, 2022, Mr. White submitted
23 three (3) unsolicited progress reports to the Association detailing efforts to
24 inspect the concrete and secure a contractor.²⁸

- 25 i. On November 07, 2022, legal counsel for the Association advised
26 Mr. White that “The Association does not want to receive progress
27 reports from you.”²⁹ The correspondence continued, in pertinent
28 parts, as follows:

29 Now you have created a “Preliminary Scope of Work” that is
30 overreaching. You seem to be using the word “original” condition to

²⁶ See Petitioner Exhibit 1, pages 20-21.

²⁷ 24.

²⁸ See Petitioner Exhibit 1, pages 29, 40, and 48.

²⁹ See Petitioner Exhibit 1, page 36.

1 give you license to describe various scenarios and direct the work
2 needed to correct each. The more reasonable approach is to direct
3 the contractor to give you a proposal for “removing entranceway tile
4 and repair concrete subsurface.”

5 The Association's requirements: The entranceway tile must be
6 removed with the concrete subsurface repaired (i.e., restored to pre-
7 tile condition) by January 31, 2023, and the requirement in #4 above
8 must be met on or before November 10, 2022.

9 If you do not comply with the Association's requirements, the Board
10 will authorize action and imposition of monetary penalties against
11 you.

12 **ADDITIONAL EVIDENCE**

- 13 q. Mr. White testified that he received an annotated copy of the Association's
14 CC&Rs prior to moving into his home, and that he realized that pages 4 and
15 6 were missing. Mr. White admitted that he never advised his realtor, the
16 third-party disclosure company (“HomeWise”), Cadden, or the Association.
17 r. Mr. White also testified that he identified “flaws in the concrete” of his
18 entryway, and that he informed the Association as much on an unknown
19 date. Before the Association could act, Respondents had a custom rug
20 fabricated and placed over the tiles in their exterior entryway. Mr. White
21 further testified that he believed the removal of the tiles at issue would
22 “create more harm than good” and that the rug “obscures tile visibility”
23 sufficient to remediate the issue.
24 s. Per the CC&Rs, the Association has a duty to maintain the structural
25 integrity of concrete within the subdivision, including on Respondents'
26 property.
27 t. Mr. White admitted that he believed he should be able to control exterior
28 portions of his residence that no one is able to view from the property line.

29 **CLOSING ARGUMENTS**

- 30 10. In closing, Petitioner argued that Respondents had been warned against
placing tile in their entryway multiple times beforehand, and then advised of their violation

1 numerous times afterward, to no avail. Per Petitioner, although afforded a reasonable
2 amount of time to remedy the violation, and then given several extensions of time,
3 Respondents had still failed to act though penalties loomed. Petitioner argued that
4 Respondents' excuse of not receiving pages 4 and 6 of the CC&Rs is a red herring, as
5 outlined in *Federoff v. Pioneer Title & Trust Co.*, 166 Ariz. 393 (1990); *Heritage Heights*
6 *Home Owners Ass'n v. Esser*, 115 Ariz. 330 (App. 1977), and as evidenced by the fact
7 that Mr. White referenced Section 3(j) in letters to the Association and Cadden. Ultimately,
8 Petitioner asked that an Order be issued in its favor, which imposed a civil penalty against
9 Respondents, and also required them to abide by Section 3(j) of the CC&Rs.

10 11. In closing Respondents argued that they could not be held to the "real" set of
11 CC&Rs because the set they had been provided were "flawed," but were the only
12 community documents they contractually had to adhere to. Therefore, Respondents
13 asked that the underlying petition be dismissed.

14 **CONCLUSIONS OF LAW**

15 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
16 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
17 planned community association. The owner or association may petition the department
18 for a hearing concerning violations of community documents or violations of the statutes
19 that regulate planned communities as long as the petitioner has filed a petition with the
20 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

21 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
22 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
23 case at bar. OAH has the authority to interpret the contract between the parties.³⁰

24 3. In this proceeding, Petitioner bears the burden of proving by a
25 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.³¹
26 Respondents bear the burden of establishing any affirmative defenses by the same
27 evidentiary burden.³²

28 ³⁰ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ³¹ See Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-119.

30 ³² *Id.*

1 4. “A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not.”³³ 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.”³⁴

8 5. 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.”³⁵

13 6. 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 7. 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.³⁶ Unless defined by the legislature, words in statutes are given their
20 ordinary meanings.³⁷

21 8. 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.³⁸

23 9. CC&Rs Section 3. The Villas Association, subsection (d) Nonstructural
24 Exterior Maintenance, provides, in pertinent part, that “[N]o Owner of a Villas Lot shall
25 paint or otherwise alter or modify the exterior surface of any residential unit on the Villas
26

27 ³³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

28 ³⁴ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

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

30 ³⁶ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

³⁷ *Id.*

³⁸ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 Lot, or make any modifications or changes to the exterior surfaces of any residential unit
2 on a Villas Lot, without the prior written approval of the Villas Association.”³⁹

3 10. CC&Rs Section 3. The Villas Association, subsection (j) Approval of
4 Construction, provides, in pertinent part, that “No ... other improvement attached to or
5 detached from other structures, and no decorative alterations ... or other work or thing
6 that in any way alters the appearance of any Villas Lot or the exterior appearance of any
7 improvements thereon ... shall be erected, placed, altered, or maintained on any Villas
8 Lot until the construction plans and specifications ... have been approved by the Villas
9 Board.”⁴⁰

10 11. CC&Rs Section 3. The Villas Association, subsection (l) Review Criteria,
11 provides, in pertinent part, that “The Villas Board shall have the right to disapprove plans
12 and specifications submitted, if, in its opinion, the plans and specifications are not in
13 accordance with all of the provisions of this Tract Declaration or are not complete or if, in
14 its opinion, the design, color scheme or location of the proposed item or work is not in
15 harmony with the general surroundings of the Villas Lot or ... are not, in the opinion of the
16 Villas Board, compatible with the general tenor of the Villas Property and of the sense of
17 uniformity intended for the Villas Property.”⁴¹

18 12. The material facts in this matter are not in dispute.

19 13. It is undisputed that after the Association refused Respondents’ request to
20 move stains from their front entryway, Respondents placed temporary tiles to cover the
21 concrete to hide the marks. It is also undisputed that Respondents were advised by
22 Cadden on no less than two (2) occasions not to permanently lay tile in their entryway
23 prior to doing exactly that. It is further undisputed that counsel for the Association provided
24 Respondents with notice of their violations on four (4) occasions between June 26, 2022,
25 an October 21, 2022, and extended Respondents’ deadline for compliance from August
26 16, 2022, to January 31, 23, with the caveat that Respondents provide a NOTICE OF INTENT
27 TO COMPLY no later than November 10, 2022, which Respondents did not. The record also

28 ³⁹ See Petitioner’s Exhibit 3; see *also* Department’s electronic file at Villas CC&Rs.pdf.

29 ⁴⁰ *Id.*

30 ⁴¹ *Id.*

reflects that although Respondents' penalty assessment period began on September 01, 2022, the Association never actually issued any penalties against Respondents that month or thereafter.⁴²

14. Therefore, the only issue in dispute is whether Respondents raised a sufficient justification or excuse for failing to adhere to the letter issued by the Association's legal counsel October 11, 2022, which required Respondents to have the entryway of their residence restored to its original condition by January 31, 2023, or pay the \$250.00 fine for completing an exterior modification without ALC approval in violation of Section 3(j) of the CC&Rs. This is an affirmative defense that Respondents bear the burden to establish. The Tribunal is not at liberty to make presumptions in favor of Respondents or accept facts in mitigation on behalf of Respondents that are not supported by the evidence. Here, an analysis is unnecessary as Mr. White admitted to the alleged conduct. The Tribunal is not swayed by Mr. White's incorrect legal interpretations regarding the annotated CC&Rs received by HomeWise, as the Pima County recorded CC&Rs provide constructive notice of all provisions contained within the community documents, or by Mr. White's placement of a custom cut rug in lieu of paying the fine to the Association. Moreover, Mr. White's conduct during the testimony was obfuscating, and is considered a factor in aggravation. Therefore, the evidentiary record in this matter reflects that Respondents violated Section 3(j) of the CC&Rs and had no affirmative defense(s) for doing so.

15. Because Petitioner established a community document violation by a preponderance of the evidence, the underlying petition must be granted as Petitioner sustained its burden of proof.

ORDER

Based on the foregoing,

⁴² Because Petitioner filed its petition with the Department on February 08, 2023, effectively stopping Respondents' penalty clock for due process purposes, Respondents' penalty period thusly runs from October 11, 2022, through January 15, 2023, totaling \$1,150.00. However, the issue of whether those penalties/monies are just, due, or otherwise appropriate is outside the purview of this Tribunal and will not be included in the ORDER.

IT IS ORDERED that Petitioner's petition be granted as the prevailing party in this matter.

IT IS FURTHER ORDERED that Respondents shall henceforth abide by Section 3(j) of the Quail Creek Villas CC&Rs.

IT IS FURTHER ORDERED that Respondents shall reimburse Petitioner its filing fee of \$500.00, to be paid directly to Petitioner within thirty (30) days of this ORDER, as required by ARIZ. REV. STAT. § 32-2199.01.

IT IS FURTHER ORDERED that Respondents shall pay a \$100.00 civil penalty in certified funds to the Department within thirty (30) days of this ORDER, as authorized by ARIZ. REV. STAT. § 32-2199.02.

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

Done this day, May 09, 2023.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted electronically to:

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