IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Thomas P. Hommrich Petitioner,

VS.

The Lakewood Community Association Respondent.

No. 23F-H048-REL

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS THE PETITION

On or about March 9, 2023, Petitioner Thomas P. Hommrich filed a single-issue petition with the Arizona Department of Real Estate alleging that Respondent lacked authority to enforce a parking rule. The petition provided, in relevant part, as follows:

Respondent is attempting to enforce a restriction that would prevent the Petitioner from legally parking on the residential street in front of their home. In doing so, they have cited Article IV, Section 4.2(t) of the CC&R's to support their actions. This section of the CC&R's does not prohibit parking on residential streets. Despite previous attempts to resolve this dispute it remains open and Respondent still cannot articulate exactly how Article IV, Section 4.2(t) of the CC&R's supports the parking citation they issued. Petitioner seeks resolution to this one issue. ISSUE#1 - Petitioner asks this Court to issue an order that prohibits the Respondent from restricting parking access on public residential streets.

On May 8, 2023, the Association filed a motion to dismiss the petition on the grounds that the petition does not concern a violation of community documents or of any statute. See A.R.S. § 32-2199.01(A).

On May 9, 2023, Petitioner filed a response to the motion and asserted that he was in fact alleging that Respondent breached the Covenants, Conditions, & Restrictions (CC&Rs) and was seeking a remedy to that issue.

On May 9, 2023, the Association filed a reply in support of its motion. The Association contended that that OAH lacks jurisdiction to grant the injunctive relief requested by the Petitioner.

Article IV, Section 4.2 of the Association's CC&Rs relates to land use classifications, permitted uses, and restrictions.

 Article IV, Section 4.2, provides:

Covenants, Conditions, Restrictions and Easements Applicable to Single Family Residential Use, Residential Apartment Development Use, Residential Condominium Development Use, and Cluster Residential Use. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels having a Land Use Classification of Single Family Residential, Residential Apartment Development, Residential Condominium Development or Cluster Residential and the Owners and Residents thereof.

Article IV, Section 4.2 (t) of the Association's CC&Rs provides:

It is the intent of the Declarant to eliminate on-street parking at Lakewood as much as possible. Vehicles shall be kept in garages, carports, residential driveways, other designated parking areas, or as required in a Recorded Tract Declaration. No parking is permitted on any street within Lakewood which shall be designated on the Map of Dedication for Lakewood. The Association may adopt additional parking, rules and restrictions, including establishing fines and assessments. The Association may delegate such rulemaking to subsidiary associations having jurisdiction over a particular Parcel.

Article IV, Section 4.2(t) of the Association's CC&Rs addresses the use restrictions and permitted uses on the Members and Lots within the Association. This section refers to what members may and may not do within the Association. Petitioner has not even alleged that the Association parked on a street within Lakewood which is designated on the Map of Dedication for Lakewood. Furthermore, this section provides that the Association *may* adopt additional parking, rules, and restrictions. Therefore, the petition does not concern a violation of community documents or of any statute.

Through the petition, Petitioner alleged that the Association lacked the authority to restrict parking on residential public streets, and that the Association improperly relied upon Article IV, Section 4.2(t) of the CC&Rs, to support its action. However, Petitioner may not challenge the Association's power to act in this tribunal under A.R.S. § 10-3304. Petitioner may seek injunctive relief regarding the Association's power to act in a court of law. See A.R.S. § 10-3304(B)(2). Therefore,

IT IS ORDERED that the petition is dismissed.

IT IS FURTHER ORDERED that any other pending motion is moot.

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, May 19, 2023.

/s/ Velva Moses-Thompson Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile May 19, 2023 to:

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