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Felicia Woodward
Petitioner

The Pointe South Mountain Residential
Association,

Respondent

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Petitioner Felicia Woodward appeared via Google Meet. Respondent Pointe South Mountain Residential Association was represented by Nathan D. Ebertshauser Esq. and Marcus R. Martinez, Esq. who appeared via Google

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 April 4, 2023, Petitioner filed a single-issue petition against the Association with the Department. Petitioner tendered \$500.00 to the Department with his petition.

1 3. On or about May 2, 2023, the Pointe South Mountain Residential
2 Association ("Association") filed its ANSWER with the Department whereby it denied all
3 complaint items in the petition.

4 4. Per the NOTICE OF HEARING, the Department referred this matter to the
5 Office of Administrative Hearings ("OAH"), an independent state agency, for an
6 evidentiary hearing on July 14, 2023, regarding the following issue based on Petitioner's
7 petition:

8 Petitioner alleges the Respondent has violated A.R.S. § 33-1804 by
9 holding a meeting that 'had not been properly noticed...'

10 **THE PARTIES AND GOVERNING DOCUMENTS**

11 5. Respondent is a homeowners' association whose members own properties
12 in a residential real estate development located in Phoenix, Arizona.

13 6. Petitioner is a property owner and a member of the Association.

14 7. The Association is governed by its Covenants, Conditions, and Restrictions
15 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The Association is also
16 regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("ARIZ. REV.
17 STAT.")

18 **HEARING EVIDENCE**

19 8. Petitioner testified on her own behalf and presented three exhibits.
20 Respondent called Erin Busey as a witness and submitted five exhibits into evidence. The
21 Agency Record from the Department and NOTICE OF HEARING were also admitted into the
22 evidentiary record.

23 Petitioner's testimony

24 9. Petitioner testified that there was not proper notice given of the Courthome
25 Improvement Workshop meeting on March 16, 2023.

26 10. Petitioner testified further that while she received the survey contained in
27 Respondent's Exhibit A well in advance of 48 hours prior to the meeting, it would still have
28 failed under the statute as the notice and link did not provide a location for the meeting.

29 11. In addition, Petitioner offered her Exhibit 3, as proof that no meeting was
30 listed on her calendar on her homepage of the community portal.

12. Finally, Petitioner testified that so many people missed the meeting because it was not properly noticed, and decisions were made that effected the entire community. Too, one of the board members voiced their concern at the meeting that there may not have been proper notice given to the community.¹

Erin Busey's testimony

13. Ms. Busey was the General Manager for the community had had been for approximately one year. She testified that the Association uses "connect" to inform the community about meetings as well as newsletters, the community calendar or email.

14. Ms. Busey testified that this was the fourth workshop held, and that the survey with the meeting information² was sent out to community members via e-mail at least 48 hours in advance.

15. Further, Ms. Busey testified as to the fact that her calendar had the meeting listed when she opened the "day view".³ Ms. Busey testified that the entire series of these workshops were added to the calendar all at the same time, and that she believed that if each owner clicked on the "day view" the workshop meeting would have appeared.

16. In addition, Ms. Busey testified that a reminder notice⁴ was sent out the day of the workshop with the Zoom link, which was considered the "location" of the meeting.

17. Finally, Ms. Busey testified that on March 7, 2023, Petitioner opened the email containing the survey and clicked on the "Survey" link.⁵

CONCLUSIONS OF LAW

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

¹ See Petitioner's Exhibit 2.

² See Respondent's Exhibit A.

³ See Respondent's Exhibit C.

⁴ See Respondent's Exhibit E.

⁵ See Respondent's Exhibit D.

1 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02,
2 and 41-1092, OAH has the authority to hear and decide the contested case at bar.

3 3. In this proceeding, Petitioner bears the burden of proving by a
4 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-
5 1804(D).⁶

6 4. “A preponderance of the evidence is such proof as convinces the trier of fact
7 that the contention is more probably true than not.”⁷ A preponderance of the evidence is
8 “[t]he greater weight of the evidence, not necessarily established by the greater number of
9 witnesses testifying to a fact but by evidence that has the most convincing force; superior
10 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
11 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
12 the other.”⁸

13 5. ARIZ. REV. STAT. § 33-1804(D) provides, in relevant part, as follows:

14 D. Notwithstanding any provision in the declaration, bylaws or other
15 community documents, for meetings of the board of directors that are held
16 after the termination of declarant control of the association, notice to
17 members of meetings of the board of directors shall be given at least forty-
18 eight hours in advance of the meeting by newsletter, conspicuous posting or
19 any other reasonable means as determined by the board of directors. An
20 affidavit of notice by an officer of the corporation is prima facie evidence that
21 notice was given as prescribed by this section. Notice to members of
22 meetings of the board of directors is not required if emergency
23 circumstances require action by the board before notice can be given. Any
24 notice of a board meeting shall state the date, time and place of the meeting.
25 The failure of any member to receive actual notice of a meeting of the board
26 of directors does not affect the validity of any action taken at that meeting.

27 6. The tribunal finds that Petitioner has not met her burden. First, the tribunal
28 was not convinced that this was a “meeting of the board of directors” under the statute. All
29 advertisements, flyers, postings, etc., clearly stated workshop in which comments as well
30 as review of the survey results would be discussed. There was no expectation that items

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⁶ See ARIZ. ADMIN. CODE R2-19-119.

⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁸ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 would be voted on or decisions made. Further, from the evidence and testimony
2 provided, Petitioner opened the email regarding the survey and clicked on the link on
3 March 7, 2023, a week prior to the workshop. Therefore, even if this were considered a
4 “board meeting” Petitioner would have had sufficient notice.

5 **ORDER**

6 **IT IS ORDERED** that Petitioner’s petition in this matter be denied.

7 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
8 Respondent shall not reimburse Petitioner’s filing fee as required by ARIZ. REV. STAT. §
9 32-2199.01.

10 **NOTICE**

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

16 Done this day, July 28, 2023.

17 /s/ Adam D. Stone
18 Administrative Law Judge
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Transmitted by either mail, e-mail, or facsimile July 28, 2023 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate
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Phoenix, Arizona 85007

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By: OAH Staff