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ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Wanda Swartling appeared on her own behalf. Chad Gallacher represented Val Vista Park Townhome Association of Mesa. Steve Cheff appeared as a witness on behalf of Val Vista Park Townhome Association of Mesa.

FINDINGS OF FACT

1. The Arizona Department of Real Estate (Department) is authorized by statute to receive petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

3. On or about May 18, 2023, Respondent submitted its ANSWER to the Department whereby it denied Petitioner's claim.

THE PARTIES AND GOVERNING DOCUMENTS

5. Respondent is an association of townhome owners whose members own properties in the Val Vista Park Townhome residential real estate development located in

1 Mesa, Arizona. Membership for the Association is comprised of the Val Vista Park
2 Townhome subdivision.

3 6. Petitioner is a Val Vista Park Townhome property owner and a member of
4 the Association.

5 **HEARING EVIDENCE**

6 7. Petitioner testified on her own behalf. Petitioner's Exhibit A pages 1-3, 8,
7 and 9, were admitted. Respondent's Exhibits 1 through 4 were admitted. Respondent
8 called Steve Cheff as a witness. The Department's electronic file and NOTICE OF HEARING
9 were also admitted into the record. The substantive evidence of record is as follows:

10 a. On August 18, 2022, an architectural committee meeting was held to
11 discuss priority maintenance projects which included painting, roofs,
12 irrigation/landscaping, updating aging community infrastructure, and a
13 proposal to create a special assessment to pay for all of the maintenance
14 projects.¹

15 b. On October 11, 2022, Board of Director's held a meeting to discuss
16 the August 18, 2022, architectural committee meeting findings and
17 recommendation for special assessments.²

18 c. On January 24, 2023, an annual meeting was held and among the
19 several agenda items included a potential special assessment as discussed
20 in the August 18, 2022, architectural committee.³

21 d. On February 7, 2023 an email notice was sent to the homeowners
22 informing them of the Board of Directors' intent to hold a special meeting on
23 March 2, 2023, for the purpose of voting on the special assessment from the
24 recommendations of the August 18, 2022, architectural committee
25 meeting.⁴

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27
28 ¹ See Respondent Exhibit 4 at 26.

29 ² *Id.* at 25.

30 ³ *Id.* at 23.

⁴ See Petitioner Exhibit A at 2-3.

1 e. On March 2, 2023, a special meeting was held, the special
2 assessment from the August 18, 2022, architectural committee meeting
3 was voted on, and failed to pass.⁵
4

5 **ARGUMENTS**

6 Petitioner's argument

7 8. Petitioner argued the Board unilaterally determined which special
8 assessments would be voted on. Petitioner argued said unilateral determination was
9 created through closed door board meetings within the meaning of ARIZ. REV. STAT. § 33-
10 1804. Petitioner argued no members were invited to be present for the decision making
11 processes associated with the March 2, 2023, special assessment.

12 Steven Cheff's testimony

13 9. Mr. Cheff testified on behalf of Respondent that the purpose of the March 2,
14 2023, special meeting was to vote on potential special assessments to be levied. Mr.
15 Cheff testified the basis for the March 2, 2023, special assessment vote was a result of the
16 recommendations from the August 18, 2022, architectural committee meetings, informal
17 discussions among board members, and emails between board members. Mr. Cheff
18 further testified that although he was not present at the August 18, 2022, architectural
19 committee meeting, it was likely the committee followed the standard procedure of
20 providing 48 hour notice to the members prior to the committee meeting. Mr. Cheff
21 testified it was standard practice for all committees to send a 48 hour notice in compliance
22 with ARIZ. REV. STAT. § 33-1804(D).

23 Respondent's argument

24 10. Respondent asserted the choice of items to be voted on at the special
25 meeting on March 2, 2023, were the direct result of email communications, architectural
26 committee meetings, and informal in-person discussions; only one of which was
27 categorized as a board meeting under ARIZ. REV. STAT. § 33-1804, the August 12, 2022
28

29 ⁵ *Id.* at 8.
30

architectural committee meeting. Petitioner was notified and given opportunity to be heard.

11. Ultimately, Respondent requested that the Tribunal dismiss Petitioner's appeal.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 *et seq.*, 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.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 *et seq.* OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.⁶

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

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁷ 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."⁸

5. ARIZ. REV. STAT. § 33-1804 states in pertinent part:

(A) Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, **all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association.**

. . . .

⁶ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

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

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

1 (F) It is the policy of this state as reflected in this section that all meetings of a
2 planned community, whether meetings of the members' association or meetings
3 of the board of directors of the association, be conducted openly and that notices
4 and agendas be provided for those meetings that contain the information that is
5 reasonably necessary to inform the members of the matters to be discussed or
6 decided and to ensure that members have the ability to speak after discussion of
7 agenda items, but before a vote of the board of directors or members is taken.

8 Emphasis added.

9 6. In this case, Petitioner failed to meet their burden. Petitioner alleged the
10 March 2, 2023, special assessment vote was based upon supposed closed-door board
11 meetings; however, Mr. Cheff credibly testified there were no such closed-door board
12 meetings. The special assessment which was voted on during the March 2, 2023, special
13 meeting were maintenance recommendations from the architectural committee meeting
14 on August 18, 2022.

15 7. The informal discussions and emails between board members may have
16 constituted board meetings under ARIZ. REV. STAT. § 33-1804, however, Petitioner failed
17 to provide sufficient evidence the number of board members meeting constituted a
18 quorum which would thereby require notice to homeowners. Furthermore, Petitioner failed
19 to provide sufficient evidence board business was conducted during these putative board
20 meetings.

21 8. Based upon a review of the credible and relevant evidence in the record,
22 Petitioner failed to meet her burden of proof.

23 9. Therefore, the Administrative Law Judge concludes that Respondent's
24 conduct, as outlined above, was not in violation of ARIZ. REV. STAT. § 33-1804.

25 **ORDER**

26 **IT IS ORDERED** that Petitioner's petition in this matter be dismissed.

27 **IT IS FURTHER ORDERED** that Petitioner's request to levy a civil penalty against
28 Respondent is denied.
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7 **NOTICE**

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

13 Done this day, August 1, 2023.

14 /s/ Brian Del Vecchio
15 Administrative Law Judge

16 Transmitted by either mail, e-mail, or facsimile August 1, 2023 to:

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18 Commissioner
19 Arizona Department of Real Estate
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