

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Dina R. Galassini,

4 Petitioner,

5 vs.

6
7 Plaza Waterfront Condominium Owners
8 Association, Inc.,

9 Respondent

No. 18F-H1818032-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

10 On July 20, 2018, the Department of Real Estate issued an Order Granting
11 Rehearing and Notice of Rehearing in this matter. The Department provided that the
12 rehearing was being granted for the reasons outlined in Petitioner's Request for
13 Rehearing.

14 Petitioner's Request for Rehearing was filed with the Department on June 26,
15 2018, and provided in pertinent part:

16 The decision by the administrative law judge (ALJ) is contrary
17 to law, and the decision that was handed down to me only
18 belongs in the judicial branch. Regarding what is a common
19 element or a limited common element (see Exhibit C) should
20 only be decided upon by a judge. For the ALJ to definitively
21 interpret actual contracts between two private parties is a due
22 process violation (separation of powers). In doing so the ALJ
23 redistributed interpreted power from the Judiciary to the
24 Executive and this is a congressional encroachment on my
25 rights.

26 According to Arizona's Constitution Article 3, Separation of
27 Powers—only the judicial branch can make decisions that
28 make decisions that bind private parties as law.

29 On August 15, 2018, Respondent filed a Motion to Vacate Rehearing. In its
30 Motion, Respondent argues that based on ARIZ. REV. STAT. section 32-2199.01 this
 matter can be resolved as matter of law. On August 21, 2018, Petitioner filed her
 Opposition to Respondent's Motion to Dismiss ("Response").

1 In her Response, Petitioner asserts that the requirements for a rehearing are
2 clearly met, and that the Department's Commissioner had ordered a "rehearing on the
3 issue of whether the Respondent Association correctly posted owner assessments for
4 the 2018 parking lot budget."

5 Respondent is correct in that this matter can be resolved as a matter of law.

6 ARIZ. REV. STAT. Title 32, Ch. 20, Art. 11 (Administrative Hearings) describes the
7 process by which a petitioner may request that the Department refer to the Office of
8 Administrative Hearings disputes between owners and condominium associations.
9 Section 32-2199.01(A) shows that hearings are to be conducted for alleged "violations
10 of condominium documents ... or violations of the statutes that regulate
11 condominiums...."

12 Petitioner is an owner of a condominium in the Respondent condominium
13 association. Petitioner alleged that the Respondent violated the condominium
14 documents. An analysis of Petitioner's claim requires interpreting the CC&Rs and the
15 definitions of "common element" and "limited common element" that are found in ARIZ.
16 REV. STAT. section 33-1202, which section is part of the statutes that regulate
17 condominiums.

18 The Office of Administrative Hearings has the authority to interpret the contract
19 between the parties (i.e., the condominium documents), see *Tierra Ranchos*
20 *Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007)(the
21 condominium documents are a contract between the parties) and the statutes that
22 regulate condominiums. See *Ariz. Cannabis Nurses Ass'n v. Ariz. Dep't of Health*
23 *Servs.*, 242 Ariz. 62, 67, 392 P.3d 506, 511 (App. 2017)("[I]t is the law of this state that
24 an agency may" take such action "which may be reasonably implied from 'a
25 consideration of the statutory scheme as a whole.'")(Citation omitted).

26 Consequently, Petitioner's argument that the original Administrative Law Judge
27 Decision is contrary to law is unfounded and it is appropriate to dismiss this matter.

28 **IT IS ORDERED** that Petitioner's petition is dismissed;

29 **IT IS FURTHER ORDERED** that Respondent's request for attorney's fees is
30 denied.

NOTICE

This administrative law judge order, having been issued as a result of a rehearing, is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A party wishing to appeal this order must seek judicial review as prescribed by ARIZ. REV. STAT. section and title 12, chapter 7, article 6. Any such appeal must be filed with the superior court within thirty-five days from the date when a copy of this order was served upon the parties. ARIZ. REV. STAT. section 12-904(A).

Done this day, August 22, 2018

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile July 30, 2018 to:

Judy Lowe, Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007
Attn: jlowe@azre.gov
LDettorre@azre.gov
AHansen@azre.gov
djones@azre.gov
DGardner@azre.gov
ncano@azre.gov

Dina R. Galassini
15832 E Brodiea Dr.
Fountain Hills, AZ 85268

Plaza Waterfront Condo Owners Association, Inc.
c/o Gary Pedersen (Statutory Agent)
MCO Realty
9617 N Saguaro Blvd.
Fountain Hills, AZ 85268
of Real Estate

By Felicia Del Sol