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Rogelio A. Garcia
Petitioner,
vs.

Villagio at Tempe Homeowners Association,
Respondent.

APPEARANCES: Petitioner Rogelio A. Garcia appeared on behalf of himself.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

1. On March 8, 2018, Respondent Villagio at Tempe Homeowners Association (“Villagio”) mailed a letter to Petitioner Rogelio A. Garcia which contained an allegation that Mr. Garcia’s unit was being rented in violation of the short term lease provisions located in Villagio’s Covenants, Conditions, and Restrictions (“CC&Rs”).

.....

Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

1 3. On March 22, 2018 and April 5, 2018, Villagio mailed similar notices which
2 contained the allegation that Mr. Garcia violated the short term lease provisions of its
3 CC&Rs. Both notices contained instructions regarding the process for contesting the
4 alleged violations.

5 4. Mr. Garcia did not respond to the notices.

6 5. On or about August 17, 2018, Mr. Garcia filed a petition with the Arizona
7 Department of Real Estate ("Department") which contained an allegation that Villagio
8 violated ARIZ. REV. STAT. section 33-1242. Mr. Garcia's petition provided, in relevant
9 part, as follows:

10 Received a violation letter which did not allow for home
11 owner to respond to violation by certified letter within 21
12 calendar days after the date of the notice, did not receive
13 notice of right to petition for an administrative hearing on the
14 matter in the state real estate department and the first and
last name of the person or persons who observed the
violation was not provided.

15 6. Villagio filed a timely response to the petition.

16 7. The matter was referred to the Office of Administrative Hearings for an
17 evidentiary hearing.

18 8. A hearing was held on October 30, 2018.

19 9. At hearing, Mr. Garcia argued that Villagio was required to provide him
20 with notice of the right to petition for an administrative hearing, and the last name of the
21 person or persons who observed the violation, pursuant to ARIZ. REV. STAT. section
22 33-1242. Mr. Garcia also contended that Villagio did not provide him with the
23 opportunity to respond to the April 8, 2018 letter within 21 calendar days of the date of
24 the letter.

25 10. Villagio disputed Mr. Garcia's allegation that it failed to provide him the
26 opportunity to respond to its notices of a violation within 21 calendar days of the date of
27 the notices. Moreover, Villagio argued that Mr. Garcia misinterpreted ARIZ. REV. STAT.
28 section 33-1242. Villagio contended that because Mr. Garcia did not respond to the
29 notice of a violation within 21 calendar days of the date of the notices, it was not
30 obligated to provide Mr. Garcia with the last name of the person or persons who

observed the violation. Villagio also contended that it was not required to provide Mr. Garcia with notice of the right to petition for an administrative hearing because Villagio informed Mr. Garcia of the process for contesting the notice.

CONCLUSIONS OF LAW

1. The Department has authority over this matter. ARIZ. REV. STAT. Title 32, Ch. 20, Art. 11.

2. Mr. Garcia bears the burden of proof to show that Respondent committed the alleged violation. The standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

3. A preponderance of the evidence is:

The 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.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4. Homeowners "may petition the department for a hearing concerning violations ... of the statutes that regulate condominiums or planned communities." ARIZ. REV. STAT. § 32-2199.01.

5. If the petitioner proves the alleged violation, "The administrative law judge may order any party to abide by the statute ... and may levy a civil penalty on the basis of each violation.... If the petitioner prevails, the administrative law judge shall order the to pay to the petitioner the filing fee...." ARIZ. REV. STAT. § 32-2199.02.

6. ARIZ. REV. STAT. section 33-1242 provides:

.....

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within

1 twenty-one calendar days after the date of the notice. The
2 response shall be sent to the address identified in the notice.

3 C. Within ten business days after receipt of the certified mail
4 containing the response from the unit owner, the association
5 shall respond to the unit owner with a written explanation
6 regarding the notice that shall provide at least the following
7 information unless previously provided in the notice of
8 violation:

9 1. The provision of the condominium documents that has
10 allegedly been violated.

11 2. The date of the violation or the date the violation was
12 observed.

13 3. The first and last name of the person or persons who
14 observed the violation.

15 4. The process the unit owner must follow to contest the
16 notice.

17 D. Unless the information required in subsection C,
18 paragraph 4 of this section is provided in the notice of
19 violation, the association shall not proceed with any action to
20 enforce the condominium documents, including the
21 collection of attorney fees, before or during the time
22 prescribed by subsection C of this section regarding the
23 exchange of information between the association and the
24 unit owner and shall give the unit owner written notice of the
25 unit owner's option to petition for an administrative hearing
26 on the matter in the state real estate department pursuant to
27 section 32-2199.01. At any time before or after completion
28 of the exchange of information pursuant to this section, the
29 unit owner may petition for a hearing pursuant to section 32-
30 2199.01 if the dispute is within the jurisdiction of the state
real estate department as prescribed in section 32-2199.01.

7. If an association receives a response to a notice of violation from a unit
owner as described in Ariz. Rev. Stat. 33-1242(B), the association must provide the unit
owner with the first and last name of the person or persons who observed the violation
pursuant to ARIZ. REV. STAT. section 33-1242(C)(4).

1 8. If an association fails to provide a unit owner with notice of the procedures
2 for contesting the notice of a violation, the association must provide the unit owner with
3 written notice of the unit owner's option to petition for an administrative hearing on the
4 matter in the Department pursuant to Ariz. Rev. Stat. section 32-2199.01.

5 9. It is undisputed that Mr. Garcia did not respond to the March 8, 2018,
6 March 22, 2018, or April 5, 2018 notices within 21 calendar days of the date of the
7 notices. Because Mr. Garcia did not respond in the 21 day period, Villagio was not
8 required to provide Mr. Garcia with the first and last name of the person or persons who
9 observed the violation.

10 10. Villagio was not required under ARIZ. REV. STAT. section 33-1242 (D) to
11 provide Mr. Garcia with notice of the right to petition for an administrative hearing,
12 because Villagio notified Mr. Garcia of the process for contesting the notice of a
13 violation.

14 11. Mr. Garcia provided no evidence to establish that Villagio prevented him
15 from responding to the March 8, 2018, March 22, 2018 and April 5, 2018 notices.

16 12. Mr. Garcia failed to establish that Respondent violated ARIZ. REV. STAT.
17 section 33-1242.

18 13. Therefore, Mr. Garcia's petition should be dismissed and Respondent be
19 deemed the prevailing party in this matter.

20 **ORDER**

21 **IT IS ORDERED** that Mr. Garcia's petition is dismissed.

22 **NOTICE**

23 **Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the**
24 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. 32-2199.04.**
25 **Pursuant to ARIZ. REV. STAT. 41-1092.09, a request for rehearing in this matter**
26 **must be filed with the Commissioner of the Department of Real Estate within 30**
27 **days of the service of this Order upon the parties.**

28 Done this day, November 19, 2018.

29 /s/ Velva Moses-Thompson
30 Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate

Transmitted through U.S. Mail to:

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