

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 N. Wayne Dwight, Jr.,

No. 19F-H1918027-REL

4 Petitioner,
5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Whisper Mountain Homeowners
7 Association,

8 Respondent.

9
10 **HEARING:** January 14, 2019, at 1:00 p.m.

11 **APPEARANCES:** N. Wayne Dwight, Jr. ("Petitioner") appeared on his own
12 behalf; Whisper Mountain Homeowners Association ("Respondent") was represented by
13 Troy B. Stratman, Esq., Stratman Law Firm, PLC.

14 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky
15

16 **FINDINGS OF FACT**

17 **BACKGROUND AND PROCEDURE**

18 1. The Arizona Department of Real Estate ("the Department") is authorized by
19 statute to receive and to decide Petitions for Hearings from members of homeowners'
20 associations and from homeowners' associations in Arizona.

21 2. Respondent is a homeowners' association ("HOA") whose members own
22 properties in the Whisper Mountain development in Mesa, Arizona.

23 3. Petitioner owns property in Respondent's development. Before August 2018,
24 Petitioner was a member of Respondent's Architectural Review Committee ("ARC").

25 4. On or about October 22, 2018, Petitioner filed a single-issue petition with the
26 Department that alleged that Respondent's Board had violated its Covenants,
27 Conditions, and Restrictions ("CC&Rs") §§ 3.2 and 7.7 by dissolving or suspending the
28 ARC on August 6, 2018, and by approving two members' application to build a
29 detached garage on their property on September 19, 2018.
30

5. Respondent filed a written answer to the petition, denying that it had violated any CC&Rs. The Department referred the petition to the Office of Administrative Hearings (“OAH”), an independent state agency, for an evidentiary hearing.

6. Respondent subsequently moved for summary judgment because, under the CC&Rs, it had the power to remove as well as appoint ARC members. After Petitioner filed a response opposing the Motion for Summary Judgment, the Administrative Law Judge denied the motion because the Arizona Rules of Civil Procedure did not apply to hearings before OAH, no administrative regulation provided for prehearing dismissal of claims, and A.R.S. § 41-1092.07(D) favored a hearing on the merits.¹

7. A hearing was held on January 14, 2019. Petitioner submitted twelve exhibits and testified on his own behalf. Respondent submitted six exhibits and presented the testimony of its Board's president, Greg Robert Wingert.

HEARING EVIDENCE

8. VIP Homes ("Declarant" in the CC&Rs) was the developer who built Respondent planned community.

9. Sometime prior to the completion of construction of Respondent's planned community in 2015, Declarant established the ARC in accordance with the requirements of Section 3.1 of the CC&Rs.

10. On September 7, 2016, Declarant recorded Respondent's CC&Rs.² Article 3 of the CC&Rs concerns the ARC and provides in relevant part as follows:

Section 3.1. Establishment. The Declarant shall establish an [ARC] to perform the functions of the [ARC] set forth in this Declaration and to adopt the procedural rules and regulations for the performance of such duties, including procedures for preparation, submission and determination of the application for any approvals required by this Declaration. . . . Subject to the provisions of this Article, the

¹ A.R.S. § 41-1092.07(D) provides in relevant part as follows:

All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. . . .

² See Petitioner's Exhibit 13 at 1.

1 decision of the [ARC] shall be final on all matters submitted
2 to it pursuant to this Declaration.

3 Section 3.2. Appeal. Any Owner aggrieved by a
4 decision of the [ARC] may appeal the decision to the Board
5 in accordance with procedures to be established by the
6 Board. If the Board fails to allow an appeal or if the Board,
7 after the appeal, again rules in a manner aggrieving the
8 appellant, the decision of the Board is final. In the event the
9 decision of the [ARC] is overruled by the Board on any issue
10 or question, the prior decision of the Architectural Committee
11 shall be deemed modified to the extent specified by the
12 Board and, for purposes of this Declaration, such decision,
13 as so modified shall thereafter be deemed the decision of
14 the [ARC]. In this regard, the Board shall have the authority
15 to modify or overrule the decision of the architectural
16 Committee on any matter presented to it.

17

18 Section 3.4. Appointment of [ARC] Members. [ARC]
19 members are appointed by the Declarant and may be
20 replaced at the discretion of the Declarant. So long as the
21 Declarant is a Member of the Association, the Declarant
22 shall have the sole right to appoint and remove the members
23 of the [ARC]. ***At such time as the Declarant no longer is
24 a Member of the Association, the members of the [ARC]
25 shall be appointed by the Board, or when such right is
26 expressly relinquished by Declarant to the Board in
27 writing, whichever occurs first.***³

28 (Emphasis added.)

29 11. Section 7.7 of the CC&Rs provides in relevant part as follows:

30 Improvements and Alterations. No Improvements,
alterations, repairs, excavations, landscaping or other work,
including exterior paint, which in any way alters the exterior
appearance of any property or the Improvements located
thereon, from its natural or improved state existing on the
date such property was first conveyed in fee by Declarant to
a Purchaser, shall be made or done without the prior written
approval of the [ARC], except as otherwise expressly
provided in this Declaration. . . .

³ Petitioner's Exhibit 13 at 4-5.

1 12. After development of Whisper Mountain was complete, Declarant turned
2 over control of Whisper Mountain HOA to Respondent's Board. Declarant is no longer
3 involved in Respondent's affairs.

4 13. Section 2.2 of the CC&Rs provides that "[t]he affairs of the Association shall
5 be conducted by a Board of Directors and such officers and committees as **the Board**
6 **may elect or appoint**, in accordance with the Articles and the Bylaws."⁴ Section 1.2 of
7 the CC&Rs defines the ARC as "the committee established **by the Board** pursuant to
8 3.1 of this section."⁵

9 14. The Administrative Law Judge assumes that Board is elected by
10 Respondent's members to specific terms of office, in accordance with the general
11 practice of homeowners' associations in Arizona. She was not able to find in the
12 CC&Rs terms relating to the Board's terms of office of elections, although she did find
13 references to members' voting rights.⁶

14 15. On March 15, 2016, Respondent's Board adopted an ARC Charter that
15 provided that the ARC would consist of up to four members approved and appointed by
16 the Board and that the Chairman of the ARC would be a Board member. The Charter
17 also provided that "[m]embers of the [ARC] shall serve until they resign, are removed for
18 cause, or are replaced. The right to appoint and remove all appointed [ARC] members
19 at any time is hereby vested solely in the Board."⁷

20 16. Petitioner was appointed to be serve as one of the three members of the
21 ARC who were not members of the Board by Respondent's Board on March 15, 2016.⁸
22 The fourth member of ARC was Mr. Wingert, who at that time was and presently is also
23 on Respondent's Board.

24 17. At Respondent's annual meeting in 2017 or 2018, an attempt was made to
25 amend §§ 2 and 3 of the CC&Rs, including § 3.1, by changing references to "Declarant"
26 to "Board" or "Association," since the Declarant was no longer involved in the
27 development. The proposed amendment also struck the last sentence of § 3.1 and

28 ⁴ Petitioner's Exhibit 13 at 4 (emphasis added).

29 ⁵ Petitioner's Exhibit 13 at 2 (emphasis added).

30 ⁶ See Petitioner's Exhibit 13 at 6 (Article 5).

⁷ Petitioner's Exhibit 2.

⁸ See Petitioner's Exhibit 1.

made other changes to other CC&Rs.⁹ The proposed amendments were not adopted by general membership.

18. On July 17, 2018, the ARC, including Petitioner, met at Mark and Connie Wells' residence to consider their application for approval of a detached garage. The draft minutes of the meeting that Petitioner submitted included the following statements:

3. Meeting resumed with ARC members resumed questioning the applicant. Discussion ensued. ARC member requested the reason for the variance, including the need for the square footage. Applicant indicated the space was needed to operate shop tools and equipment. Parking space (for a vehicle) and visibility from the road also factor into the placement of the garage as close as possible to the rear wall.
4. Meeting was abruptly adjourned after the applicant verbally threatened the committee; no committee vote was conducted.¹⁰

19. Petitioner testified that because the Association's setback requirements were 5' and the City of Mesa's setback requirements were 7', at the July 17, 2018 ARC meeting on Mr. and Mrs. Wells application for approval of a detached garage, he expressed doubts whether the ARC had authority to grant a variance that would violate the City of Mesa's setback requirements. Petitioner testified that Mr. Wingert, who was both Chairman of the ARC and president of the Board, stated that if the ARC was concerned about potential liability, it should defer the matter to the Board. Petitioner testified that if the ARC deferred to the Board, it would not comply with the CC&Rs.

20. Despite the events described in the minutes, on July 30, 2018, Douglas Egan of Respondent's management company, the Mariposa Group LLC ("Mariposa"), sent a letter to Mr. and Mrs. Wells, informing them that the ARC "has reviewed and approved your amended architectural request to erect a 789.9 square foot L-shaped 'proposed garage/shop'"¹¹ Petitioner did not dispute at the hearing that the ARC that he was a member of had approved the Wells' plans for a detached garage.

⁹ See Petitioner's Exhibit 17; Respondent's Exhibit 4.

¹⁰ Petitioner's Exhibit 22 at 1-2.

¹¹ Respondent's Exhibit 5.

1 21. Petitioner then went on vacation. On August 6, 2018, the Board met and
2 discussed various matters, including the ARC. The minutes of the August 6, 2018
3 Board meeting provided in relevant part as follows:

4 Discussion of two lots that [have] submitted requests were
5 discussed, with lot 18 wanting to build a detached garage
6 and lot 45 adding a paver walkway and driveway to their RV
7 Gate.

8 Ronna mentioned the need to be more consistent in the
9 review of the ARC requests. Phil Hoyt, lot 16, suggested
10 having guidelines for any special meetings that are called. It
11 was also discussed that two committee members had
12 requested safety guarantees, but there had been no further
13 incidents since the special meeting. Pam made a
14 [suggestion] to suspend the ARC committee, and Ronna
15 discussed the lack of guidelines as one of the reasons. Gary
16 also mentioned that the committee needs to follow the BOD
17 direction and is supportive of community members being on
18 the committee. Andy Horn, lot 1, mentioned that the
19 committee regulations should be in place and the
20 suspension should have an end date. Ronna made a motion
21 to suspend the ARC committee for 60 days until
22 guidelines/expectations are clarified according to the Charter
23 that was approved. Pam seconded, the vote to approve was
24 3-0.¹²

25 22. On August 24, 2018, Respondent's Board sent a letter to the three
26 members of the ARC who did not sit on the Board, in relevant part as follows:

27 At the August 6th 2018 Whisper Mountain Board Meeting, the
28 board discussed a request from ARC members to respond to
29 safety concerns following the July 17, 2018 ARC meeting
30 held to review an application for a detached garage [Lot 18].

 The HOA Board determined that the current approach to
submission review, including the decisions to refer some
submissions for homeowner participation, required review.

 The Board made a motion that was passed to suspend the
ARC for not longer than 60 days. In the interim the Board
will review and approve all ARC submissions.

¹² Petitioner's Exhibit 9.

During the 60 days suspension period the Board will draft rules and guidelines for the following:

- ARC member conduct
- Scope of investigation required for submission approval/denial
- Direction for approval/denial subjectivities
- When submissions will require homeowner input
- How homeowner input will be achieved
- Plan for communication to homeowners of submissions received and approval/declination¹³

23. On September 17, 2018, the Board met. With respect to the status of the ARC, the minutes of the Board stated as follows:

With the suspension of the ARC committee, Greg mentioned the painting request from the Hoyts in lot 16, and the revised request from the Wells in lot 18. The City of Mesa had modified the original plans to alter the community's 7 ft variance to 5ft, with the proposed garage being set back more in the backyard. Greg made a motion to accept the revision to match the city's code, Pam seconded it. Jason Komorowski (lot 51) questioned changing the rules without homeowner feedback. There were two decisions made by the board, and they were to defer ARC rules change to align with city code until additional neighborhood input is gathered, [and] approval of the Lot 18 variance for the 5' setback and conditioned on receipt of written neighbor's concern (Connie Harrison and Pam Cohen). Don Berry (lot 45) said he had no issue with the changes. Greg made the motion and Pam seconded. Vote was unanimous. Greg made mention of the ARC committee suspension and he would arrange a meeting with the committee and the BOD to discuss what will occur moving forward.¹⁴

24. On or about September 19, 2018, the Board, acting as the ARC, reviewed Mr. and Mrs. Wells revised Application for Design Review, which included a review and approval of the City of Mesa Planning Department.¹⁵

¹³ Petitioner's Exhibit 3.

¹⁴ Petitioner's Exhibit 10.

¹⁵ See Petitioner's Exhibit 4.

1 25. On September 20, 2018, Ed Ericksen, the Community Manager employed
2 by Mariposa, sent a letter to Mr. and Mrs. Wells, informing them that the ARC had
3 reviewed and approved their revised architectural request.¹⁶

4 26. On October 8, 2018, Petitioner sent a letter to Mr. Ericksen, requesting that
5 he correct the September 20, 2018 letter because "Mr. Wells' application was not
6 approved by the [ARC] . . . because the ARC has been suspended since the Board
7 meeting of August 6, 2018."¹⁷

8 27. On October 9, 2018, Mr. Ericksen sent another letter to Mr. and Mrs.
9 Wells, informing them that the Board "has reviewed and approved your revised
10 architectural request to install a detached garage in your back yard"¹⁸

11 28. On November 19, 2018, after Petitioner filed the Petition with the
12 Department, Respondent's Board adopted a Resolution Regarding the ARC that
13 provided in relevant part as follows:

14 WHEREAS, the Association is governed by the
15 [CC&Rs], including any subsequent amendments thereto
(hereinafter, the "declaration"),

16 WHEREAS, pursuant to Section 3.1 of the
17 Declaration, an [ARC] shall exist to perform the functions set
18 forth in the Declaration.

19 WHEREAS, pursuant to Section 3.2 of the
20 Declaration, "any Owner aggrieved by a decision of the
21 [ARC] may appeal the decision to the Board."

22 WHEREAS, pursuant to Section 3.4 of the
23 Declaration, "the members of the [ARC] shall be appointed
24 by the Board."

25 WHEREAS, in or around August 2018, the Board (i)
26 temporarily removed the current members of the [ARC] (via
27 a suspension) and (ii) chose to act and serve as the current
28 [ARC] (i.e., the Board members would also serve as the
29 members of the [ARC]).

30 ¹⁶ See Petitioner's Exhibit 5; Respondent's Exhibit 1.

¹⁷ Petitioner's Exhibit 6; Respondent's Exhibit 2.

¹⁸ Petitioner's Exhibit 7.

1 WHEREAS, the Board desires to clarify (via this
2 Board resolution) that it is currently acting as the [ARC] for
3 the Association and will continue to do so unless or until the
4 Board chooses to appoint non-Board members to the [ARC].

5 NOW, THEREFORE, the Board of Directors hereby
6 approves, confirms and/or ratifies the following:

- 7 • As set forth in Section 3.4 of the Declaration, the
8 Board has the right to appoint and/or remove the
9 members of the [ARC]. In accordance therewith, the
10 Board (in or around August 2018) (i) temporarily
11 removed the current members of the [ARC] and (ii)
12 chose to act and serve as the [ARC] for the
13 Association.
- 14 • The current members of the [ARC] consist solely of
15 the members of the Board. The Board will continue to
16 serve as the [ARC] unless or until the Board chooses
17 to appoint non-Board members to the [ARC].
- 18 • Any and all architectural decisions made by the Board
19 (while also serving as the [ARC] for the Association)
20 are hereby reconfirmed and/or ratified. This includes
21 the decision to approve the Owner's request to install
22 a detached garage on Lot 18.¹⁹

23 29. Petitioner argued that because CC&R § 3.4 only allowed the Board to
24 appoint, but not to remove, ARC members and Respondent's members failed to pass
25 the proposed amendments to Title 3, once appointed, ARC members could only be
26 removed for cause, for example, if they moved out of Respondent development or
27 became incapacitated. Otherwise, they were entitled to serve for the rest of their lives.

28 30. Petitioner also implicitly argued that the appeal to the Board of ARC
29 decisions would be rendered meaningless if the Board could also issue decisions acting
30 as the ARC.

31 31. Mr. Wingert has been a member of the Board since 2015, when the
Developer/Declarant relinquished control, and has been a member of the ARC since its
inception in 2016. Mr. Wingert testified that § 3.4 of the CC&Rs gave the Board the

¹⁹ Petitioner's Exhibit 12; Respondent's Exhibit 6.

1 power to remove as well as to appoint members of the ARC. He did not agree that ARC
2 members could only be removed for cause.

3 32. Mr. Wingert testified that intent of the proposed amendment to § 3.4 was
4 not to allow the Board to remove members of the ARC, but only to remove references to
5 the Declarant, since the developer was no longer a member of or involved in the
6 association.

7 33. Mr. Wingert testified that the Board removed the non-Board members of
8 the ARC because the Board was concerned about the manner in which questioning was
9 done in a public forum. Mr. Wingert testified that it was never the Board's intent to get
10 rid of the ARC, which serves an important purpose. The original intent was to continue
11 the architectural review process, while considering changes to make the process more
12 civil, fair, consistent, and transparent to members.

13 34. Mr. Wingert testified that the ARC has done some good work. After
14 August 2018, the Board solicited input from neighbors, who expressed some concerns
15 about the behavior of the ARC that had been appointed in 2016, especially its way of
16 questioning applicants. Mr. Wingert testified that the Board may appoint non-Board
17 members to the ARC in the future.

18 35. Mr. Wingert testified that the Board's intention in August 2018, was to
19 remove temporarily the current non-Board members of the ARC, not to abolish or
20 suspend the ARC. When Mr. and Mrs. Wells' third architectural application was
21 submitted in September 2018, his intent was to have the Board act as the ARC. Mr.
22 Wingert testified that Respondent still has a functioning ARC.

23 36. Mr. Wingert testified that employees of Mariposa draft minutes and letters
24 to inform Respondent's members of Board decisions. Although Board members have a
25 chance to review documents that Respondent's management company's employees
26 draft, they do not always make changes required for complete accuracy. Mr. Wingert
27 testified that Mariposa's choice of the words, "suspend" or "dissolve" with respect to the
28 ARC was unfortunate and inaccurate. Other language would have been preferable.

29 37. Mr. Wingert testified that the November 18, 2018 Board Resolution was
30 meant to clarify previous communications and to inform members that there was still an
ARC at Whisper Mountain, but that it was composed of Board members who were

1 wearing a different hat. Mr. Wingert pointed out that Mr. and Mrs. Wells were not
2 aggrieved members because both the former ARC and the ARC composed of Board
3 members had approved their application. Because Mr. and Mrs. Wells submitted their
4 plans to two different ARCs composed of different members, who both approved the
5 plans, § 7.7 of the CC&Rs were not violated.

6 **CONCLUSIONS OF LAW**

7 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
8 to file a petition with the Department for a hearing concerning violations of planned
9 community documents under the authority Title 33, Chapter 16.²⁰ This matter lies with
10 the Department's jurisdiction.

11 2. Petitioner bears the burden of proof to establish that Respondent violated
12 CC&Rs §§ 3.2 and 7.7 by a preponderance of the evidence.²¹ Respondent bears the
13 burden to establish affirmative defenses by the same evidentiary standard.²²

14 3. "A preponderance of the evidence is such proof as convinces the trier of fact
15 that the contention is more probably true than not."²³ A preponderance of the evidence is
16 "[t]he greater weight of the evidence, not necessarily established by the greater number of
17 witnesses testifying to a fact but by evidence that has the most convincing force; superior
18 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
19 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
20 than the other."²⁴

21 4. In Arizona, a restrictive covenant is enforced to give effect to the intent of the
22 parties.²⁵ "Restrictive covenants must be construed as a whole and interpreted in view
23 of their underlying purposes, giving effect to all provisions contained therein."²⁶
24

25 ²⁰ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
26 the development's CC&Rs

27 ²¹ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
28 Ariz. 369, 372, 249 P.2d 837 (1952).

29 ²² See A.A.C. R2-19-119(B)(2).

30 ²³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

²⁴ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

²⁵ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

²⁶ *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 5. The CC&Rs are not well-written. Under Petitioner's interpretation of CC&R §
2 3.4, as long as non-elected ARC members continued to reside or own property at
3 Whisper Mountain, did not become incapacitated, and were not convicted of a crime,
4 they could continue to serve on ARC and impose their own will on all development,
5 upgrades, and maintenance that required ARC approval, no matter how unpopular
6 those unelected officials' opinions were and no matter how much discord they sowed in
7 Whisper Mountain. Members' only recourse would be to appeal the lifetime members of
8 ARC's decision to the Board, which could disagree but could never change the ARC's
9 standards or way of doing business. Petitioner's interpretation elevates non-elected
10 members of ARC above elected Board members, abrogates any community control
11 over ARC, and does not serve the underlying purposes of the CC&Rs.

12 6. Because the developer Declarant is no longer involved in Respondent HOA's
13 affairs, it can no longer appoint or remove members of the ARC. When Declarant
14 turned Respondent HOA over to its Board, the Board assumed all of Declarant's rights
15 and responsibilities under the CC&Rs and related documents. The ARC Charter
16 expressly provided that the Board had the power to remove as well as to appoint
17 members of the ARC. The Board acted within its authority under the CC&Rs and
18 related documents in August 2018, when it removed the three non-Board members of
19 the ARC and appointed itself to perform the functions of the ARC specified in the
20 CC&Rs. Because the Board, acting as the ARC, approved the Wells' application in
21 September 2018, Petitioner did not establish that Respondent violated CC&R § 7.7.

22 7. Requiring a member to appeal an ARC decision to the same persons who
23 rendered the decision, now sitting as the Board, may be an exercise in futility.
24 However, the Board is not required to hear appeals in any event under CC&R § 3.2 and
25 may allow an ARC decision to stand even if the Board and the ARC have different
26 members. The CC&Rs do not provide members any remedy for the Board's refusal to
27 act on an appeal. Petitioner did not establish that anyone was aggrieved by an ARC
28 decision or that any of the CC&Rs prohibit Board members from acting as the ARC.
29 Therefore, Petitioner did not establish that Respondent violated CC&R § 3.2.

30 8. Presumably, if any aggrieved member finds additional evidence or garners
support among the community to bolster his position with respect to an application for

1 ARC approval of any improvement in his appear to the Board, the Board may
2 reconsider the decision it reached acting as the ARC. Members may also elect a
3 different Board that has promised to appoint non-Board members to the ARC. The
4 democratic principles underlying HOA law in Arizona do not support Petitioner's position
5 or the establishment of an unelected lifetime appointment to ARC.

6 **ORDER**

7 IT IS ORDERED that Petitioner's petition is denied because he has not
8 established that CC&Rs §§ 3.2 or 7.7 prohibited Respondent HOA from replacing non-
9 Board members of the ARC in August 2018, appointing its own members to act as the
10 ARC, or approving Mr. and Mrs. Wells' application to build a detached garage in
11 September 2018.

12 **NOTICE**

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

18 **////**

19 **////**

20 Done this day, January 29, 2019.

21 /s/ Diane Mihalsky
22 Administrative Law Judge

23 Transmitted electronically to:

24 Judy Lowe, Commissioner
25 Arizona Department of Real Estate
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