

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Nathan Brown,
4 Petitioner,

5 vs.

6 Val Vista Lakes Community Association,
7 Respondent.

No. 19F-H1918029-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** January 16, 2019

9 **APPEARANCES:** Nathan Brown on his own behalf; Clint Goodman, Esq. for the
10 Respondent

11 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

12 **FINDINGS OF FACT**

13 1. On November 27, 2018, the Arizona Department of Real Estate issued a
14 Notice of Hearing setting the above-captioned matter for hearing on January 16, 2019 at
15 the Office of Administrative Hearings in Phoenix, Arizona.

16 2. Petitioner Nathan Brown appeared and testified on his own behalf.
17 Respondent Val Vista Lakes Community Association presented the testimony of
18 Simone McGinnis, its general manager.

19 3. On or about October 24, 2018, Mr. Brown filed with the Department the
20 petition that gave rise to this matter.

21 4. The Notice of Hearing shows that Mr. Brown alleges that Respondent
22 violated ARIZ. REV. STAT. section 33-1803(E).

23 5. Respondent mailed to Mr. Brown a Notice of Non-Compliance dated
24 October 18, 2018.

25 6. The Notice of Non-Compliance informs Mr. Brown that there is dead
26 vegetation in his yard and that he is in violation of the CC&Rs. The Notice of Non-
27 Compliance "request[s]" that Mr. Brown remedy the situation by November 1, 2018, and
28 informs him that a failure to do so will result in the issuance of a Notice of Violation that
29 may involve fines. The Notice of Non-Compliance informed Mr. Brown that if he had
30 questions he could contact the compliance coordinator by phone or email.

1 7. Mr. Brown asserts that the Notice of Non-Compliance is a Notice of
2 Violation and that the Respondent violated ARIZ. REV. STAT. section 33-1803(E)
3 because the Notice did not include "written notice of the member's option to petition for
4 an administrative hearing on the matter in the state real estate department pursuant to
5 section 32-2199.01."

6 8. Respondent takes the position that section 33-1803 is not applicable
7 because the Notice of Non-Compliance is not a Notice of Violation, but rather what is
8 commonly called a courtesy letter or notice.

9 9. Courtesy letters are common in the industry and the Respondent's
10 governing documents allow for the issuance of courtesy letters.

11 10. Mr. Brown did not send to Respondent a response to the Notice of Non-
12 Compliance as allowed by ARIZ. REV. STAT. section 33-1803(C).

13 11. On November 11, 2018, Mr. Brown was issued a Notice of Violation
14 regarding the issue raised in the Notice of Non-Compliance.

15 CONCLUSIONS OF LAW

16 1. The Department of Real Estate has authority over this matter. ARIZ. REV.
17 STAT. Title 32, Ch. 20, Art. 11.

18 2. Mr. Brown bears the burden of proof, and the standard of proof on all
19 issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-
20 19-119.

21 3. A preponderance of the evidence is:

22 The greater weight of the evidence, not necessarily established
23 by the greater number of witnesses testifying to a fact but by
24 evidence that has the most convincing force; superior
25 evidentiary weight that, though not sufficient to free the mind
26 wholly from all reasonable doubt, is still sufficient to incline a
27 fair and impartial mind to one side of the issue rather than the
28 other.

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

30 4. Statutes should be interpreted to provide a fair and sensible result.
Gutierrez v. Industrial Commission of Arizona, 226 Ariz. 395, 249 P.3d 1095 (2011)
(citation omitted); *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968)
("Courts will not place an absurd and unreasonable construction on statutes.").

1 5. ARIZ. REV. STAT. section 33-1803 provides in pertinent part:

2 C. A member who receives a written notice that the condition
3 of the property owned by the member is in violation of the
4 community documents without regard to whether a monetary
5 penalty is imposed by the notice may provide the association
6 with a written response by sending the response by certified
7 mail within twenty-one calendar days after the date of the
8 notice. The response shall be sent to the address identified in
9 the notice.

10 D. Within ten business days after receipt of the certified mail
11 containing the response from the member, the association
12 shall respond to the member with a written explanation
13 regarding the notice that shall provide at least the following
14 information unless previously provided in the notice of
15 violation:

16 ***

17 4. The process the member must follow to contest the notice.

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

(Underscoring and bolding added).

6. Mr. Brown asserts that the Notice of Non-Compliance is a Notice of
Violation. But a reasonable reading of the Notice of Non-Compliance shows that it is not
a Notice of Violation, because it informs Mr. Brown that a Notice of Violation would be
issued if he did not appropriately address the "situation."

1 7. A plain reading of ARIZ. REV. STAT. section 33-1803 shows that a Notice of
2 Violation is not required to include notice of the right to petition the Department of Real
3 Estate because subsections D and E both show that any required notice can be given at
4 other times. Consequently, even if Mr. Brown is correct and the Notice of Non-
5 Compliance is a Notice of Violation, there was no requirement that the Notice provide
6 any required disclosures.

7 8. Mr. Brown did not file with the Respondent a written response to the Notice
8 of Non-Compliance, he filed his petition a few days after he received that Notice, and
9 the Respondent has not brought any action to enforce the Notice of Non-Compliance.
10 As such, a sensible reading of the statute shows that the Respondent was not required
11 to provide Mr. Brown with notice of a right to petition the Department at any time
12 pertinent to this matter.

13 9. Mr. Brown has not shown that the Respondent violated ARIZ. REV. STAT.
14 section 33-1803(E).

15 10. Mr. Brown's petition should be dismissed and the Respondent be deemed
16 to be the prevailing party in this matter.

17 **ORDER**

18 **IT IS ORDERED** that Petitioner Nathan Brown's petition is dismissed.

19 **NOTICE**

20 **Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the**
21 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-**
22 **2199.04. Pursuant to ARIZ. REV. STAT. section 41-1092.09, a request for rehearing**
23 **in this matter must be filed with the Commissioner of the Department of Real**
24 **Estate within 30 days of the service of this Order upon the parties.**

25 Done this day, February 4, 2019.

26
27
28 /s/ Thomas Shedden
29 Thomas Shedden
30 Administrative Law Judge

Transmitted by mail or e-mail to:

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