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ADMINISTRATIVE LAW JUDGE DECISION

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

6. In his petition, Mr. Martin stated that the relief he was requesting was for the Respondent to provide financial support in the sum of \$463,112.00 for the

1 expansion of pickleball courts in Bobcat Canyon or to provide eight pickleball courts
2 within a two mile radius of the community within the next year, and for the Respondent
3 to be financially responsible for the maintenance of the pickleball courts in an amount
4 equal to that which it spent on eight tennis courts.

5 7. On November 30, 2018, Respondent filed a Motion to Dismiss in the
6 original matter. Respondent argued that the Department did not have jurisdiction over
7 the matter because pursuant to ARIZ. REV. STAT. section 32-2199.01, hearings are
8 limited to disputes regarding the planned community documents (or violations of the
9 applicable statutes) and neither the website nor policy BC-3 are "community
10 documents" within the meaning of ARIZ. REV. STAT. section 33-1802(2). Respondent
11 also argued that Mr. Martin's requested relief was not within the tribunal's authority to
12 grant.

13 8. ARIZ. REV. STAT. section 33-1802(2) defines community documents as "the
14 declaration, bylaws, articles of incorporation, if any, and rules, if any."

15 9. On December 4, 2018, Mr. Martin filed a Response to Respondent's
16 Motion to Dismiss. In his Response, Mr. Martin wrote that his "stated claim is specific:
17 (a) the Association is in violation for not providing pickleball courts as advertised and
18 marketed...."

19 10. In his Response, Mr. Martin argued that consistent with ARIZ. REV. STAT.
20 section 1-213, "policy" should be given its ordinary meaning, and to the effect that in the
21 ordinary sense of the word, a "policy" is a rule.

22 11. In his Response, Mr. Martin also asserted that because Respondent's
23 policy CE-3 defines "governing documents" as the Articles of Incorporation, CC&Rs,
24 Bylaws, Rules and Regulations, BC-3 is a governing document.

25 12. Through an Administrative Law Judge Decision dated December 12, 2018,
26 the undersigned ordered that Mr. Martin's petition be dismissed because he had not
27 alleged a violation meeting the requirements of ARIZ. REV. STAT. section 32-2199.01.

28 13. On December 31, 2019, Mr. Martin filed with the Department his request
29 for a rehearing. Mr. Martin reasserted his position that a "policy" is a rule, and he argued
30 that he could show that Respondent had violated its bylaws by failing to implement
BC-3. More specifically, Mr. Martin alleged that Respondent had violated Bylaws article

1 4, section 6(3) by failing to implement policy BC-3. Mr. Martin also alleged that
2 Respondent violated Articles of Incorporation Article XII by not providing pickleball as
3 promised, which he alleged was in violation of policy BC-3.

4 14. Respondent's CC&Rs at section 4.5 sets out its authority to adopt rules.
5 Respondent has not adopted policy BC-3 as a rule.

6 15. At the rehearing, Mr. Martin confirmed that in his petition he had not
7 alleged that Respondent violated Bylaws article 4, section 6.

8 16. At the rehearing, Respondent renewed its argument that the Department
9 does not have jurisdiction over this matter.

10 **CONCLUSIONS OF LAW**

11 1. Ariz. Rev. Stat. Title 32, Ch. 20, Art. 11 (Administrative Hearings)
12 describes the process by which a petitioner may request that the Department refer to
13 the Office of Administrative Hearings disputes between owners and planned community
14 associations. Section 32-2199.01(A) shows that hearings are to be conducted for
15 alleged "violations of ... planned community documents or violations of the statutes that
16 regulate ... planned communities."

17 2. If a violation of the planned community documents is found to exist:

18 The administrative law judge may order any party to abide
19 by the statute, condominium documents, community
20 documents or contract provision at issue and may levy a civil
21 penalty on the basis of each violation. All monies collected
22 pursuant to this article shall be deposited in the
23 condominium and planned community hearing office fund
24 established by section 32-2199.05 to be used to offset the
25 cost of administering the administrative law judge function. If
26 the petitioner prevails, the administrative law judge shall
27 order the respondent to pay to the petitioner the filing fee
28 required by section 32-2199.01.

29 ARIZ. REV. STAT. § 32-2199.02

30 3. When the legislature defines a word or term, the tribunal must follow that
definition. See *e.g.*, *Walker v. Scottsdale*, 163 Ariz. 206, 786 P.2d 1057 (App. 1989).

1 4. The legislature has defined “community documents” to mean “the
2 declaration, bylaws, articles of incorporation, if any, and rules, if any.” Ariz. Rev. Stat. §
3 33-1802(2). This definition does not include a planned community’s statements of
4 policy, statements on its website, or advertising and marketing material.

5 5. Mr. Martin’s argument that policy BC-3 should be considered to be a rule is
6 not persuasive because Respondent has not adopted that policy as a rule. See *McNally*
7 *v. Sun Lakes Homeowners Ass’n #1, Inc.*, 241 Ariz. 1, 382 P.3d 1216 (2016 App.)
8 (CC&Rs are a contract that both parties must abide by).

9 6. In his petition, Mr. Martin alleged only that Respondent violated its website
10 and its policy manual, which are not community documents within the meaning of ARIZ.
11 REV. STAT. section 33-1802(2). Because Mr. Martin did not allege in his petition that
12 Respondent violated community documents, his petition does not meet the
13 requirements of ARIZ. REV. STAT. section 32-2199.01(A). Moreover, the relief Mr. Martin
14 is requesting is not within the scope of the Administrative Law Judge’s authority. See
15 Ariz. Rev. Stat. § 32-2199.02.

16 7. Consequently, Mr. Martin’s petition should be dismissed.

17 **ORDER**

18 **IT IS ORDERED** that Petitioner Tom J. Martin’s petition is dismissed.

19 **NOTICE**

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

26 Done this day, May 10, 2019.

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

1 Transmitted by either mail, e-mail, or facsimile May 10, 2019 to:

2
3 Judy Lowe, Commissioner
4 Arizona Department of Real Estate
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23 By: JS
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