

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Lori & James Jordan,

4 Petitioner,

5 vs.

6
7 The Pines at Show Low Condominium
8 Owners' Association, Inc.,

9 Respondent.

No. 21F-H2120014-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

10
11 **HEARING:** November 23, 2020

12 **APPEARANCES:** Petitioner Lori Jordan appeared via Google Meet. Chuck
13 Stewart appeared as a witness for Petitioner via Google Meet. Sean Lissarrague
14 appeared for Respondent via Google Meet.

15 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

16
17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

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

22 2. On or about August 31, 2020, Petitioner filed a single-issue petition against
23 Respondent The Pines at Show Low Condominium Owners' Association, Inc.
24 ("Association") with the Department.¹ Petitioner tendered \$500.00 to the Department with
25 her petition.²

26 3. On or about October 5, 2020, the Association filed its ANSWER with the
27 Department whereby it denied all complaint items in the petition.³

28
29 ¹ See Agency File.

30 ² *Id.*

³ *Id.*

1 4. Per the NOTICE OF HEARING, the Department referred this matter to the
2 Office of Administrative Hearings ("OAH"), an independent state agency, for an
3 evidentiary hearing on November 23, 2020, regarding the following issues based on
4 Petitioner's petition:

5 **The Petitioner alleges that Respondent has failed in the '...duty of the**
6 **Association to make sure that sewers are maintained...' and have**
7 **failed to pay the deductible for the repairs/s [sic] caused by the, '...**
8 **blockage that occurred in the main line outside the building in the**
9 **common area...' The Petitioner alleges that this failure is cause by**
10 **violating or misreading Community Documents CCR's Sections 3.04,**
11 **3.07 & 3.09.**

12 **THE PARTIES AND GOVERNING DOCUMENTS**

13 5. The Association is a condominium association whose members own
14 properties in a development located in Show Low, Arizona.

15 6. Petitioner is a property owner and a member of the Association.

16 7. The Association is governed by its Covenants, Conditions, and Restrictions
17 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The Association is also
18 regulated by Title 33, Chapter 9 of the Arizona Revised Statutes ("ARIZ. REV. STAT.")

19 **HEARING EVIDENCE**

20 8. Petitioner testified on her own behalf and called Chuck Stewart as a
21 witness. Sean Lissarrague, Vice President of the Board, testified on behalf of the
22 Association. The Agency Record from the Department and NOTICE OF HEARING were also
23 admitted into the evidentiary record.

24 Lori Jordan's testimony

25 9. Ms. Jordan testified that she and her brother were the occupants of unit
26 1006, however they were not fulltime residents of the property. Ms. Jordan's father owned
27 the property through a trust.

28 10. Ms. Jordan testified that in approximately October 2018, she was informed
29 that there was damage to her unit due to a sewer backup issue in the main sewer line.

30 11. Further, Ms. Jordan testified that once she was informed of the damage,
"nobody knew how to deal with it", and "no one knew who was responsible for what."

12. Specifically, Ms. Jordan was disputing whether she should be apportioned a share of the insurance deductible. She argued that the damage occurred as a result of the sewer line backup caused by tree root growth in a common area, thus it should be the Association's responsibility for the full insurance deductible.

Chuck Stewart's testimony

13. Mr. Stewart testified that he did not believe it was right for the Board to assess a proportionate share of the insurance deductible. He further testified that he joined the Board soon thereafter and urged the Board to reconsider its decision in a June 18, 2020 meeting. Mr. Stewart testified that the Board again voted to uphold its original decision and he was the only Board member to vote "no".

14. In addition, Mr. Stewart testified that it was his belief that there was an improper installation of a four inch coupling and this was where the tree roots entered the sewer line causing the backup.

15. Finally, Mr. Stewart testified that he believed that because the damage occurred in a common area and that because the Association was responsible under the CC&Rs for maintenance of the same, they should be solely responsible for the damages incurred.

Sean Lissarrague's testimony

16. Mr. Lissarrague, Vice President of the Board, testified that he believed it was proper to reconsider the previous decision of the apportionment of the deductible.

17. Mr. Lissarrague testified that he believed that the reliance on the CC&Rs was misplaced and that the relevant document was the 2012 Rules and Regulations.⁴ Mr. Lissarrague testified that it was this document, specifically section 19, which granted authority to the Board to apportion the deductible.

18. Mr. Lissarrague testified that Ms. Jordan's Unit 1006, and Unit 1003 suffered damage and that Ms. Jordan's unit was apportioned 43.84% of the deductible or \$10,958.96 in total.

⁴ See Respondent's Exhibit 1.

19. Also, Mr. Lissarrague testified that it was the unit owner's responsibility to maintain the proper gap insurance coverage for situations such as these.

20. In addition, Mr. Lissarrague testified that the Board fulfilled its obligations under the CC&Rs, as it had paid for repairs on the line and if there was an issue with the coupling installed, the proper action may have been against the plumber.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a condominium association, the owner or association may petition the department for a hearing concerning violations of condominium documents or violations of the statutes that regulate condominiums so long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02, and 41-1092, the Office of Administrative Hearings has the authority to hear and decide the contested case at bar.

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated the CC&Rs

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁵ A preponderance of the evidence is "[t]he 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."⁶

5. Article III Section 3.04 of the CC&Rs states:

Section 3.04. Designation of Limited Common Elements

(a) The following portions of the property are designated as Limited Common Elements:

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

⁶ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 (1) Front entry decks, storage areas and the wood storage
2 areas on the front entry decks shall be Limited Common Elements
3 allocable to the Units to which each front entry deck, storage area
4 and wood storage area is adjacent, subject to the easement for
5 ingress & egress specified in Section 7.08, where an entry decks is
6 adjacent to two Units, each Unit shall be allocated the portion of the
7 entry deck on that Unit's side of the imaginary extension line of the
8 party wall between the two Units.

9 (2) **Balconies;** exterior doors and windows and their related
10 frames, sills and hardware; shutters; awnings; window boxes;
11 fireplace boxes; and other fixtures designed to serve a single Unit,
12 but located outside that Unit's boundaries, are Limited Common
13 Elements allocated exclusively to that Unit.

14 (b) The Limited Common Elements described in Section 3.02 (c) and
15 (e).

16 6. Article III Section 3.07 of the CC&Rs states:

17 **Section 3.07. Maintenance Responsibilities of Owner.** Each
18 Owner of a Unit shall be responsible for the following maintenance
19 responsibilities

20 (a) The Owner shall maintain, repair and replace all portions of his
21 Unit, including but not limited to: dishwashers, laundry equipment,
22 ranges, ovens, water heaters and other built-in appliances; all
23 carpeting, tile, ceiling, and wall coverings; and all interior partitions
24 and doors.

25 (b) The Owner shall maintain, repair, replace, and restore, at his own
26 expense, all Limited Common Elements allocated solely to his Unit,
27 including but not limited to: all exterior doors, window glass, window
28 sills and frames and window screens (including all exterior hardware
29 and trim); all balconies; all electrical, water, sewer, heating, cooling
30 or exhaust chutes, flues, ducts, wires, conduits, which serve his Unit,
up to the point where the chute, flue, duct wire or conduit joins
another chute, flue, ducts, wires, conduit serving one or more other
Units or serving any Common Element; all fireboxes, fire flues, and
chimneys; all storage areas and wood storage area; all balconies;
and all entry decks, The Owner shall remove all snow from his entry
decks and balconies.

(c) Each Owner shall be liable to the Association for any damage to
any Reserved Common Elements which have been reserved for the
exclusive use of the Owner.

1 (d) Each Owner shall have an easement over, across through such
2 portions of the Common Elements as are necessary in order for the
3 Owner to perform his obligations under this Section 3.07.

4 (e) Each Owner, to the extent permitted by law, does hereby waive,
5 to the extent of any liens created pursuant to this Declaration,
6 whether such liens are now in existence or are created at any time in
7 the future, the benefit of any homestead or exemption laws of the
8 State of Arizona now in effect, or in effect from time to time, hereafter.

9 7. Article III Section 3.09 of the CC&Rs states:

10 **Section 3.09. Maintenance Responsibilities of Association.** The
11 Association shall be responsible for the following maintenance
12 responsibilities: (a) The Association shall maintain, repair, and make
13 necessary improvements to all of the Common Elements (except
14 those portions to be maintained by the Owners pursuant to Section
15 3.07), including but not limited to: all common recreational facilities
16 and improvements, all roadways, landscaping, drainage facilities,
17 parking areas, sidewalks, exterior portions of the buildings, roof,
18 exterior vertical walls, foundations, stairways, the space above the
19 buildings, the water distribution system within the Property and the
20 sewer collection system within the Property; and the refuse collection
21 system;

22 (b) The Association shall maintain, repair, and make necessary
23 improvements to the Reserved Common Element (except as the
24 Reserved Common Elements are required to be maintained by the
25 Owners pursuant to Section 3.07.)

26 8. The material facts in this matter are not in dispute.

27 9. Under the above referenced sections, the Association was to maintain and
28 repair the sewer collection system within the property. There is no dispute that it did so.
29 Once the sewer backed up, the Association coordinated the repairs and accomplished
30 the same. Petitioner failed to demonstrate that the Association failed to properly attend
to the maintenance and/or repair of the sewer lines. Thus, the Administrative Law Judge
concludes that there was no violation of the CC&Rs sections 3.04, 3.07 and 3.09.

10. Although not specifically plead, what Petitioner is really challenging is Section 19 of the 2012 Rules and Regulations.⁷

11. Section 19 of the 2012 Rules and Regulations states:

19. Payment of the Insurance Deductible

Based upon its powers, the Board of Directors has adopted the following resolution governing the Association's insurance deductible and makes the provisions below part of the Rules and Regulations:

a. When damage occurs only to one unit, and not to any of the common areas as defined in the Declaration, the Unit owner shall pay the Association's insurance deductible.

b. Except as set forth in Paragraph d, when damage occurs to more than one unit, each unit owner shall be responsible for part of the Association's deductible in proportion to the cost of reconstruction and repair to their respective units, as determined by the Board of Directors.

c. Except as set forth in paragraph d, if damage occurs in the Common areas in addition to the unit(s), the Association shall be responsible for part of the Association's insurance deductible in proportion to the cost of reconstruction and repair of the common areas, as determined by the Board of Directors.

d. If the damage is caused to either the common areas or units by the willful or negligent act of an Owner or any of his/her or their guest, tenants, their invitees or members of his/her or their family, the Owner is responsible for the full cost of the insurance deductible.

e. Each Owner needs to be aware of the amount of the Association's insurance deductible so that the Owner can determine that their personal insurance coverage will cover any gap.

All errors in original.

12. Sections 19(b) and (c) appears to have anticipated the present scenario. There was damaged caused to two units and the common area, and Petitioner was

⁷ Section 4.10 of the CC&Rs granted authority to adopt rules "for the regulation and operation of the Property..."

1 apporportioned 43.84% of the deductible. From the evidence presented, the Association
2 also properly applied the applicable Rules and Regulations.

3 13. Based on the forgoing, Petitioner failed to meet her burden of proof that
4 Respondent violated the CC&Rs in apportioning her a proportionate share of the
5 insurance deductible.

6 **ORDER**

7 **IT IS ORDERED** that Petitioner's petition in this matter be denied.

8 **NOTICE**

9 **Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the**
10 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04.**
11 **Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter**
12 **must be filed with the Commissioner of the Department of Real Estate within thirty**
13 **(30) days of the service of this ORDER upon the parties.**

14 Done this day, December 1, 2020.

15
16 /s/ Adam D. Stone
17 Administrative Law Judge
18

19 Transmitted electronically to:

20 Judy Lowe, Commissioner
21 Arizona Department of Real Estate

22 Lori & James Jordan
23 P.O. Box 50145
24 Phoenix, AZ 85076
lorijordan1@cox.net

25 The Pines At Show Low
26 2700 S White Mountain Rd.
27 Show Low, AZ 85901

28 By: c. serrano
29
30