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Petitioner,

Blue Ridge Estates Homeowners'
Association,

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Petitioner Charles P. Mandela appeared on his own behalf via e Meet. Nicholas Nogami, Esq. appeared on behalf of Respondent Blue Ridge Homeowners Association of Coconino County.

BACKGROUND AND PROCEDURE

2. On or about January 13, 2020, Petitioner filed a single-issue petition against the Blue Ridge Estates Homeowners Association of Coconino County with the Department.

4. Petitioner argued that the Respondent improperly denied his patio shade as it was not going to be a stand-alone structure, but rather attached to his residence.

1 5. Respondent argued that it properly denied Petitioner's request, as it
2 provided a written response that the shade would count as another structure on the
3 property.

4 6. Following the hearing, the Administrative Law Judge issued a Decision
5 dated January 29, 2021, concluding that Petitioner failed to meet its burden of proof that
6 Respondent violated the CCR's, as Respondent properly denied the request for the patio
7 shade.

8 7. On or about February 5, 2021, after issuance of the Administrative Law
9 Judge Decision, Petitioner filed a Homeowner's Association (HOA) Dispute Rehearing
10 Request citing as particular grounds for the request that the findings of fact were arbitrary,
11 capricious, or an abuse of discretion, and that the findings of fact or decision was not
12 supported by the evidence or contrary to law.

13 8. On or about March 15, 2021, the Commissioner of the Arizona Department
14 of Real Estate issued an Order Granting Rehearing and Notice of Hearing (Order). In the
15 Order, the Commissioner indicated "the Department hereby grants the Petitioner's
16 request for rehearing for the reasons outlined in the Rehearing Petition," stating that
17 Petitioner had claimed, "the findings of fact or decision is arbitrary, capricious, or an abuse
18 of discretion."

19 9. On April 16, 2021, the Tribunal conducted a rehearing. Based on
20 consideration of the evidence presented at the first administrative hearing and at the
21 rehearing, the Administrative Law Judge finds as follows:

22 a. Petitioner testified that since the decision on January 29, 2021, his
23 request for the patio shade had been approved by the Board.

24 b. Petitioner testified that he had requested to build his patio shade
25 several times including, in February 2018, November 2018, and January
26 2019, and was either denied outright or the Board failed to respond to the
27 request.

28 c. Petitioner argued that Article 10.3 requires the Board to provide a
29 written response within 30 days of the submission of the request. Since
30

Petitioner made his request on August 28, 2019, and the Board responded on October 25, 2019, Petitioner argued that the Board violated this section.

d. Petitioner argued that because of the previous denials, he had been discriminated against and that all HOA members should be treated equally.

e. Respondent argued that Article X does not provide any discussion as to the reasonableness of the decisions. Further Respondent argued that while Article 10.3 maybe confusingly drafted, the Board was in its authority to have request deemed denied after the 30 days.

f. Finally, Respondent argued that Petitioner did not follow the appeal provisions in the CCR's as he failed to specifically request a meeting to discuss the denial.

CONCLUSIONS OF LAW

1. Arizona statute permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents or violations of statutes that regulate planned communities. A.R.S. § 41-2198.01. That statute provides that such petitions will be heard before the Office of Administrative Hearings.

2. Petitioner bears the burden of proof to establish that Respondent committed the alleged violations by a preponderance of the evidence.¹ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.²

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."³ 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

¹ See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

² See A.A.C. R2-19-119(B)(2).

³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
2 the other.”⁴

3 4. Section 10.3 states,

4 Submission and Review of Plans. No original construction and no
5 modification, alteration or addition subject to the Architectural Committee’s
6 jurisdiction (including, but not limited to, landscaping) shall be commenced
7 until it has been approved or is deemed approved by the Architectural
8 Committee as provided herein. Any Owner or other person or entity seeking
9 to construct or install any new improvements or landscaping or to make any
10 modification, alteration or addition to any existing improvement (including,
11 but not limited to, landscaping) upon any portion of the Property (or to cause
12 same to be constructed, installed or made) shall first submit to the
13 Architectural Committee detailed plans, specifications and elevations
14 relating to the proposed construction, installation, modification, alteration or
15 addition prior to making any submission to Coconino County. All plans,
16 specifications and elevations (including, but not limited to, a detailed site
17 plan) shall be sent to the Architectural Committee by (a) personal delivery in
18 which case the person delivering the same shall obtain a signed and dated
19 receipt from the recipient thereof (in which event they shall be deemed
20 received as of the date indicated by the recipient on such receipt), or (b) by
21 U.S. mail, postage paid, certified mail, return receipt requested (in which
22 event they shall be deemed received as of the date indicated on the return
23 receipt). ***The Architectural Committee shall have thirty (30) days after
24 receipt of such plans, specifications, and elevations to approve or
25 disapprove of the proposed construction, installation, modification,
26 alteration or addition or to request additional information, and, if the
27 Architectural Committee disapproves, to give such Owner or other
28 person or entity reasonably detailed written reasons for such
29 disapproval. In the event the Architectural Committee fails either to
30 approve or disapprove the proposed construction, installation,
modification, alteration or addition (or to request additional
information) within said thirty (30) day period, such proposed
construction, installation, modification, alteration or addition shall be
deemed disapproved and the Owner can then request a meeting with
the Architectural Committee to discuss the reasons for such
disapproval and thereafter avail himself of the remedies available in
Section 10.10 hereof.***⁵

(Emphasis added)

⁴ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁵ See Respondent’s Exhibit A.

1 5. On rehearing, Petitioner failed to provide new evidence or witness testimony
2 demonstrating that Respondent violated Article X of the CCR's. Petitioner wished to
3 argue that all of the previous denials were in violation of the section, yet his Petition only
4 referenced the August 28, 2019 request and subsequent denial, thus was the sole focus
5 of the prior hearing.

6 6. While Respondent took undoubtedly greater than thirty days to issue its
7 denial, the section goes on to state that if no written response is received the request is
8 deemed denied. Admittedly this section is unartfully drafted, but from the evidence
9 presented, the request was properly deemed denied.

10 7. Further, Petitioner admitted that in his several email responses that he did
11 not formally request a meeting with the Architectural Committee, thus he failed to follow
12 the procedures in Section 10.3.

13 8. The Administrative Law Judge is bound by A.R.S. § 32-2199.02(A) which
14 states, "[t]he administrative law judge may order any party to abide by the statutes,
15 condominium documents, community documents or contract provision at issue..." Thus,
16 it too cannot force the Respondent to approve the architectural request. The only relief
17 that can be granted is the abidance of the CCR's.

18 9. Given an exhaustive review of the hearing records and the exhibits
19 presented for consideration in both hearings, the Administrative Law Judge concludes
20 herein that there was no violation by the Respondent. Thus, Petitioner failed to sustain his
21 burden to establish a violation by Respondent of Article X of the CCR's. The
22 Administrative Law Judge concludes that the hearing record demonstrates that the
23 Respondent acted in compliance with the CCR's, and the Respondent is the prevailing
24 party in this rehearing.

25 ORDER

26 IT IS ORDERED that the Respondent is the prevailing party with regard to the
27 rehearing, and Petitioner's appeal is dismissed.

28 **This administrative law judge order, having been issued as a result of**
29 **a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party**
30 **wishing to appeal this order must seek judicial review as prescribed**
by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such

1 **appeal must be filed with the superior court within thirty-five days**
2 **from the date when a copy of this order was served upon the parties.**
3 **A.R.S. § 12-904(A).**

4 Done this day, April 27, 2021.

5 /s/ Adam D. Stone
6 Administrative Law Judge

7 Transmitted electronically to:
8

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10 Arizona Department of Real Estate

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