

No. 21F-H2120016-REL-RHG

# ADMINISTRATIVE LAW JUDGE DECISION

**V.**

Dorsey Place Condominium Association,

Respondent.

**HEARING:** July 2, 2021

**APPEARANCES:** Petitioner Haining Xia appeared on his own behalf. Nick Nogami, Esq. represented Respondent Dorsey Place Condominium Association.

**ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

## FINDINGS OF FACT

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

2. On or about September 21, 2020, Haining Xia (“Petitioner”) filed a single-issue petition against Dorsey Place Condominium Association (“Respondent”) with the Department. In his petition, Petitioner asserted that Respondent had violated Respondent’s Bylaws Articles 3.3., 4.1, and 4.4 because “Respondent never elected the board at its Annual Members Meetings. In the notices for Annual Members Meeting of 2018 and 2019, board election was not even on the agendas. This is in direct violation of HOA Bylaws Article 3.3, Article 4.1 and Article 4.4.”<sup>1</sup>

3. At the January 7, 2021 hearing, Respondent argued that the Office of Administrative Hearings does not have jurisdiction over this matter because Respondent is not a Condominium because its Condominium status was terminated in 2019, pursuant

<sup>1</sup> See Notice of Hearing issued on November 20, 2020.

1 to a "Condominium Termination Agreement" recorded on April 9, 2019, and consequently,  
2 Respondent no longer meets the legal requirements of A.R.S. § 33-1202(10).

3 4. Petitioner testified at the January 7, 2021 hearing that:

- 4 a. He continues to own the unit as the sale has not been finalized and argued  
5 that the condominium status could not be changed because he still owns it.  
6 Petitioner argued that the termination agreement is not valid because it  
7 "does not contain valid signatures" and that it was a "usurpation of corporate  
8 power." Petitioner asserted that he plans to appeal the Superior Court  
9 ruling, however, he has not yet done so. Petitioner stated that the judge in  
10 that case was "not aware Petitioner is still the titled owner" of the unit.
- 11 b. At that hearing, initially Petitioner sought to invalidate the termination  
12 agreement. The Administrative Law Judge advised Petitioner that the issue  
13 regarding the validity of the termination agreement has been adjudicated in  
14 Maricopa County Superior Court and that the Office of Administrative  
15 Hearings does not have the authority to overturn or modify that ruling.
- 16 c. Thereafter, Petitioner addressed the actual issue in his filed Petition.  
17 Petitioner testified that the 2018 Notice of Meeting provided notice that the  
18 purpose of the meeting was to vote for a special assessment, and that the  
19 meeting was supposed to be held in March 2018, but was not held until  
20 August 2018. Petitioner asserted that there was not a valid board for that  
21 meeting.
- 22 d. Petitioner further asserted that the 2019 annual meeting was held to discuss  
23 the termination agreement, however, there was no election of board  
24 members or appointment of officers. Petitioner requested "a definitive  
25 answer as to whether there were valid corporate officers."

26 5. Following the hearing, the Administrative Law Judge issued a Decision  
27 dated January 22, 2021, concluding that Petitioner failed to meet his burden of proof as he  
28 failed to present any evidence at hearing, documentary or otherwise, but rather relied  
29 solely on his own assertions.  
30

1           6.       On or about February 18, 2021, Petitioner filed a Homeowner's Association  
2 (HOA) Dispute Rehearing Request citing as particular grounds for the request that there  
3 was error in the admission or rejection of evidence or other errors of law occurring during  
4 the proceeding.

5           7.       On or about March 23, 2021, the Commissioner of the Arizona Department  
6 of Real Estate issued an Order Granting Rehearing and Notice of Hearing ("Order"). In  
7 the Order, the Commissioner indicated "the Department hereby grants the Petitioner's  
8 request for rehearing for the reasons outlined in the Rehearing Petition . . ."

9           8.       On July 2, 2021, the Tribunal conducted a rehearing.

10          9.       Petitioner testified that he "wants a finding that there was no legitimate  
11 board and no officers appointed." Petitioner testified that the condominium still exists.  
12 Petitioner submitted into evidence Annual Membership Meeting Notices for the August  
13 28, 2018 and April 4, 2019 annual meetings. See Petitioner's Exhibits 1 and 2. Petitioner  
14 also submitted into evidence Action by Written Consent of a Majority of the Unit Owners of  
15 [Respondent], as well as a November 16, 2018 Board Resolution Filling Director and  
16 Officer Vacancies. Petitioner did not provide an explanation of the documents at hearing  
17 or testimony concerning the documents. Petitioner asserted that he is the only  
18 homeowner "who stood up to fight" that he is fighting "evil" and "looking for justice."

19          10.       Respondent submitted a pre-hearing memorandum in which Respondent  
20 argued that the Office of Administrative Hearings lacks jurisdiction over this matter due to  
21 the fact that Respondent is no longer and has not been a condominium association since  
22 April 2019, pursuant to the Condominium Termination Agreement recorded on April 9,  
23 2019, which pre-dates Petitioner's originally filed petition. Further, there was no  
24 preliminary injunction or temporary restraining order during the pendency of the Superior  
25 Court proceeding and the Termination Agreement has been in effect since April 2019.  
26 Respondent argued at hearing the points contained in its pre-hearing memorandum.

#### 27                               **CONCLUSIONS OF LAW**

28          1.       Arizona statute permits an owner or a planned community organization to  
29 file a petition with the Department for a hearing concerning violations of planned  
30 community documents or violations of statutes that regulate planned communities.

1 A.R.S. § 41-2198.01. That statute provides that such petitions will be heard before the  
2 Office of Administrative Hearings.

3 2. Petitioner bears the burden of proof to establish that Respondent committed  
4 the alleged violations by a preponderance of the evidence.<sup>2</sup> Respondent bears the burden  
5 to establish affirmative defenses by the same evidentiary standard.<sup>3</sup>

6 3. “A preponderance of the evidence is such proof as convinces the trier of fact  
7 that the contention is more probably true than not.”<sup>4</sup> A preponderance of the evidence is  
8 “[t]he greater weight of the evidence, not necessarily established by the greater number of  
9 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
10 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
11 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than  
12 the other.”<sup>5</sup>

13 4. Article 3.3 of the Bylaws, Annual Members Meeting states:

14 The annual meeting of the Members shall be held in the month of March  
15 each year, beginning March 2006, with the exact date to be determined each  
16 year by the Board, provided that the Board may elect to delay the annual  
17 meeting past March in any given year (but in no event later than May 31) if  
18 necessary to permit preparation of financial statements or budgets, or for  
19 such other reasons as may be determined by the Board, in its good faith  
20 discretion. At each annual meeting the Members shall elect the Board and  
21 transact such other business as may properly be brought before the meeting.

22 5. Article 4.1 of the Bylaws, Election states:

23 The business and affairs of the Association shall be managed, conducted  
24 and controlled by the Board. The directors shall be appointed or elected as  
25 provided in the Declaration, and for the term(s) specified therein. Except as  
26 provided in the Declaration, each director shall be elected at the annual  
27 meeting of Members concurrent with the expiration of the term of the  
28 director he or she is to succeed, and, except as otherwise provided in these  
29 Bylaws or in the Articles or the Declaration, shall hold office until his or her  
30 successor is elected and qualified. Nothing herein shall be construed to  
prevent the appointment or election of any person or persons to two or more

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

<sup>3</sup> See A.A.C. R2-19-119(B)(2).

<sup>4</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>5</sup> BLACK’S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

1 terms as director, whether or not such terms shall be consecutive. No  
2 person shall be eligible for election as a director who is not at the time of  
3 election a Member of the Association, except such persons as may be  
4 designated by Declarant or by a corporate, partnership or other non-  
5 individual Unit Owner. If, after election: (a) any director (except for a director  
6 designated by Declarant or by a corporate, partnership or other non-  
7 individual Unit Owner) cease to be a Member, he or she shall thereupon no  
8 longer be a director and his or her office shall become vacant; or (b) a  
9 corporate, partnership or other non-individual Unit Owner ceases to be a  
10 Member, any director serving by virtue of having been designated by such  
11 corporate, partnership or other non-individual Unit Owner shall thereupon  
12 no longer be a director and his or her office shall become vacant.

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15 6. Article 4.4 of the Bylaws, Annual Board Meetings states:

16 Within thirty (30) days after each annual meeting of Members, the newly  
17 elected directors shall meet forthwith for the purpose of organization, the  
18 election of officers, and the transaction of other business and, if a quorum of  
19 the directors is present, no prior notice of such meeting shall be required to  
20 be given, provided that the place and time of such first meeting of newly-  
21 elected directors may be changed by written consent of all of the directors.

22  
23 7. On rehearing, Petitioner failed to establish that Respondent violated its  
24 Bylaws Articles 3.3., 4.1, and 4.4 as alleged in his petition. Petitioner alleged that  
25 Respondent failed to hold proper elections in 2018 and 2019, however, Petitioner failed to  
26 establish that an election was required during either of those years.

27 8. On review of the hearing records and the exhibits presented for  
28 consideration in both hearings, the Administrative Law Judge concludes herein that  
29 Petitioner failed to sustain his burden to establish a violation by Respondent of its Bylaws  
30 Articles 3.3., 4.1, and 4.4 as alleged in his petition. The Administrative Law Judge  
concludes that Respondent is the prevailing party in this rehearing.

### **ORDER**

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

**This administrative law judge order, having been issued as a result of  
a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party  
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  
5 Done this day, July 14, 2021.

6  
7 /s/ Sondra J. Vanella  
8 Administrative Law Judge

9 Transmitted electronically to:

10 Judy Lowe, Commissioner  
11 Arizona Department of Real Estate  
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