

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Darryl Jacobson-Barnes & Robert Barnes,

No. 21F-H2120022-REL

4 PETITIONER,
5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Circle G Ranches 4 Homeowners
7 Association,

8 RESPONDENT.

9
10 **HEARING:** January 26, 2021, March 3, 2021, and July 14, 2021 with the record
11 held open until August 4, 2021.

12 **APPEARANCES:** Anthony L. Perez, Esq. appeared on behalf of Petitioner Darryl
13 Jacobson-Barnes & Robert Barnes. Clint G. Goodman, Esq. appeared on behalf of
14 Respondent Circle G Ranches 4 Homeowners Association (the HOA).

15 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

16
17 **FINDINGS OF FACT**

18 1. Petitioner owns a home in Circle G Ranches 4 (Circle G). Petitioner is a
19 member of the HOA.

20 2. Michelle Mooney owns a home located behind Petitioner's home in Circle
21 G. Ms. Mooney is a member of the HOA Board of Directors.

22 3. VISION Community Management manages the HOA community. Jennifer
23 Amundson works as a community manager for VISION and is assigned to manage the
24 HOA.

25 4. Ms. Mooney filed a complaint with the HOA alleging that Petitioner had
26 installed a floodlight without the approval of the Architectural Control Committee and
27 that the light was visible from the street and neighboring lots. See Exhibit M.

28 5. On May 27, 2020, the HOA issued a letter to Petitioner that contained an
29 allegation that an unapproved flood light was installed at the back of Petitioner's home

1 in violation of Article III, Section 3.10 of the HOA CC&Rs. Ms. Amundson issued the
2 May 27, 2020 letter after reviewing photographs from Ms. Mooney that contained
3 images of a light intrusion. See Ms. Amundson's testimony on Hearing Audio 1342
4 2021-07-14).AAC at 4:30 to 43:41. Through the May 27, 2020 letter, the HOA notified
5 Petitioner of the process to contest the notice and that the alleged violation was
6 inspected by Ms. Amundson, CAAM, CMS, AMS. The May 27, 2020 letter provided, in
7 relevant part, as follows:

8 ROBERT A BARNES AND DARRYL LYNN BARNES—
9 JACOBSON 2009 E CAROLINE LN TEMPE, AZ 85284
10 Circle G Ranches 4 Lot #: 050 / 2009 E Caroline Ln / Tempe,
11 AZ 85284

12 Dear Robert A Barnes and Darryl Lynn Barnes—Jacobson,
13 Living in a planned community such as yours provides the
14 homeowners with many benefits, but it also makes necessary
15 certain restrictions. The entire community is monitored
16 regularly for adherence to the CC&R's, rules, regulations and
17 architectural guidelines of your community. All homeowners
18 are asked to do their part in protecting property investments
19 by following these rules.

20 CC&Rs, Article III, Section 3.10: "Except as provided within,
21 no single-family residence, garage, barn, stable or shed,
22 fence or other structure shall be constructed without first
23 obtained the prior approval of design, location and materials
24 by the Architectural Control Committee."

25 The following violation was noted.

26 **Inspected by Jen Amundson, CAAM, CMS, AMS on**
27 **5/27/2020 Unapproved changes to property: The**
28 **unapproved flood light installed on the back of home**
29 **needs to be removed. Please submit an architectural**
30 **application. Thank you. Please submit a copy of the**
approval to update your file if applicable or submit an
Architectural Application for review, or remove the
unapproved item from view of neighboring properties.

If you have extenuating circumstances that will prevent you
from correcting the violation within the allotted time frame,
please contact Vision Community Management immediately.
If you would like to request a hearing with the Board of

1 Directors on this matter, please submit a written request to our
2 office within 21 days. You are hereby provided written notice
3 that you, the unit owner, have the option to petition for an
4 administrative hearing on this matter in the Department of
Real Estate pursuant to Arizona Revised Statutes Section 32-
2199.01.

5 We are asking that you take steps to correct this violation
6 within 21 days to avoid a penalty in the amount of \$50.00 by
7 the Association as outlined by your community's Enforcement
8 Policy. The Enforcement Policy is available on the association
website.

9 Thank you in advance for your prompt compliance regarding
10 this request and for making this community a wonderful place
11 to live. Should you have any questions regarding this letter,
please call our office immediately.

12 6. Petitioner requested a hearing regarding the May 27, 2020 notice.
13 Petitioner requested that the hearing be held in an open session.

14 7. On July 9, 2020, the HOA conducted a hearing regarding Petitioner's
15 appeal in an open session at a board meeting. Petitioner and Petitioner's neighbor
16 agreed to resolve the matter involving the excessive light over a period of 10 days. The
17 Board Meeting Minutes from the July 9, 2020 provided, in relevant part, as follows:

18 Open Appeal as Requested by Homeowner Barnes: Upon a
19 written request by homeowners Darryl Barnes and Bob
20 Barnes, the Board President provided for an Open Appeal of
21 Violation during the open board meeting. The Barnes utilized
22 20 minutes to make their appeal. Board members asked
23 questions. The neighbors impacted by the excessive light
24 trespass spoke. Bob Barnes verbally agreed to work with the
25 affected neighbors over a 10 day time period to adjust or
26 mitigate the light trespass. Adjournment: The Board President
27 adjourned the open meeting immediately following the
28 homeowner appeal in order that the board could vote upon the
29 appeal in closed, executive session. The open meeting was
30 adjourned at 8:05pm.

8. Petitioner and Petitioner's neighbor were unable to resolve the matter.

1 9. On July 24, 2020, the HOA conducted a hearing regarding Petitioner's
2 appeal at a board meeting in an open session. The Board voted on the appeal in a
3 closed session because the Board needed to obtain legal advice regarding its decision
4 of Petitioner's appeal. See the testimony of Amanda Stewart at testimony on Hearing
5 Audio 1342 2021-07-14).AAC at 43:37 to 1:32:26. The Board Meeting Minutes from the
6 July 24, 2020 Board meeting provided, in relevant part, as follows:

7 Open Appeal as Requested by Homeowner Barnes: Upon a
8 written request by homeowners Darryl Barnes and Bob
9 Barnes, the Board President Amanda Stewart provided for an
10 Open Appeal of Violation during the open board meeting. The
11 Barnes utilized 20 minutes to make their appeal. Board
12 members asked questions. The neighbors impacted by the
13 excessive light trespass spoke. The decision will be made in
14 the executive closed session. Adjournment: The Board
President Amanda Stewart adjourned the open meeting
immediately following the homeowner appeal in order that the
board could vote upon the appeal in closed, executive
session. The open meeting was adjourned at 8:37pm.

15 10. On or about August 18, 2020, the Board notified Petitioner
16 that the appeal was denied.

17 11. On or about October 20, 2020, the Arizona Department of Real Estate
18 (Department) received a four-issue petition from Petitioner. The petition contained an
19 allegation that the HOA violated Article 3, section 3.10, Article 7, section 3, and Article
20 12, section 2 of the HOA's CC&Rs; Arizona Revised Statutes (A.R.S.) § 33-1803(D) and
21 (E); A.R.S. § 33-1804(a)(5); A.R.S. § 33-1811.

22 12. On December 17, 2020, the Department issued a Notice of Hearing
23 setting the petition for hearing on January 26, 2021. The Notice of Hearing provided that
24 the issues set for determination were:

- 25 1. The Association violated A.R.S. § 33-1803(D) and (E) by
26 failing to properly respond to the Barnes response to the
27 notice of alleged violation and proceeding with enforcement
28 actions.
29 2. The association violated A.R.S. § 33-1804(a)(5) in
30 rendering its decision on the Barnes contest of the notice.

3. The alleged violation and resulting penalty imposed are void and unenforceable under A.R.S. § 33-1811.

4. The alleged violation is outside the scope of the cited CC&R Article III, § 3.10.

13. A hearing was held on January 26, 2021, March 3, 2021 and July 14, 2021.

14. Article III, Section 3.10 of the HOA CC&Rs provides:

Except as provided within, no single-family residence, garage, barn, stable or shed, fence or other structure shall be constructed without first obtained [sic] the prior approval of design, location and materials by the Architectural Control Committee. All such approvals shall be obtained pursuant to the provisions and requirements of Article IV herein."

15. Article IV, 4.6 of the CC&Rs provides:

The Architectural Control Committee shall have the authority and responsibility to review the Plans and Specifications of all single-family residences, garages, barns, stables, sheds, fences and other structures to be constructed in the subdivision pursuant to the terms hereof, and perform such other duties as may be delegated to it by the Board. The Architectural Control Committee shall have the right to refuse to approve any plans or specifications or grading plans, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure including exterior color scheme, shall be subject to the prior approval of the Architectural Control Committee. No Changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final and no lot owner or other party shall have recourse against the

Architectural Control Committee for its refusal to approve any such plans and specifications or plot plans, including lawn area and landscaping.

CONCLUSIONS OF LAW

1. At this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated A.R.S. § 33-1808. See A.A.C. R2-19-119.

2. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

3. A.R.S. § 33-1803 provides:

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

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

1. The provision of the community documents that has allegedly been violated.

2. The date of the violation or the date the violation was observed.

3. The first and last name of the person or persons who observed the violation.

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

E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney

1 fees, before or during the time prescribed by subsection D of
2 this section regarding the exchange of information between
3 the association and the member and shall give the member
4 written notice of the member's option to petition for an
5 administrative hearing on the matter in the state real estate
6 department pursuant to section 32-2199.01. At any time
7 before or after completion of the exchange of information
8 pursuant to this section, the member may petition for a
9 hearing pursuant to section 32-2199.01 if the dispute is within
10 the jurisdiction of the state real estate department as
11 prescribed in section 32-2199.01.

12 4. Upon consideration of the evidence presented at the hearing, the
13 Administrative Law Judge concludes that Petitioner has not established that the HOA
14 violated A.R.S. § 33-1803(D) and (E). If a homeowner's association satisfies the
15 requirements in A.R.S. § 1803(D) (1)-(4) in its notice of violation, A.R.S. § 33-1803 (E)
16 is not triggered and does not apply. The weight of the evidence shows that the HOA
17 notified Petitioner of the provision of the community documents that had allegedly been
18 violated, the date the violation was observed, the first and last name of the person who
19 observed the violation, and the process the member must follow to contest the notice
20 through the May 27, 2020 notice. Therefore, the HOA was not required to comply with
21 A.R.S. § 33-1803(E) and the provision does not apply.

22 5. The preponderance of the evidence does not show that Respondent
23 violated A.R.S. § 33-1804(5) because Petitioner's appeal was discussed in an open
24 session. Moreover, the HOA presented credible testimony that the session was closed
25 to allow the HOA to seek legal counsel concerning its decision in Petitioner's appeal
26 pursuant to A.R.S. § 33-1804(A)(1).

27 6. The preponderance of the evidence does not show that the alleged
28 violation and resulting penalty imposed are void and unenforceable under A.R.S. § 33-
29 1811. A.R.S. § 33-1811 applies to the validity of any contract, decision, or action for
30 compensation taken by or on behalf of the Board. There was no evidence presented at
hearing that the Petitioner's appeal involved a contract, decision or other action for
compensation.

1 7. The preponderance of the evidence does not show that the alleged
2 violation of an unapproved flood light on Petitioner's home is outside the scope of the
3 cited CC&R Article III, § 3.10. Respondent alleged that an unapproved flood light was
4 installed at the back of Petitioner's home. Such allegation falls within the scope of
5 CC&R Article III, § 3.10.

6 8. Consequently, the petition filed by Darryl L. Jacobson-Barnes and Robert
7 Barnes should be dismissed and Respondent be deemed to be the prevailing party in
8 this matter.

9 **ORDER**

10 **IT IS ORDERED** that the petition filed by Darryl L. Jacobson-Barnes and Robert
11 Barnes petition is dismissed.

12 **NOTICE**

13 **Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the**
14 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-**
15 **2199.04. Pursuant to ARIZ. REV. STAT. section 41-1092.09, a request for rehearing**
16 **in this matter must be filed with the Commissioner of the Department of Real**
17 **Estate within 30 days of the service of this Order upon the parties.**

18 Done this day, August 24, 2021.

19 /s/ Velva Moses-Thompson
20 Administrative Law Judge

21 Transmitted electronically to:

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