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ADMINISTRATIVE LAW JUDGE DECISION

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

6. During Petitioner's presentation of his case, Petitioner argued that during the July Board meeting on July 15, 2021, the Board of Directors voted to hire the Board

1 President George Pavia as an office assistant and that Mr. Pavia failed to disclose the
2 conflict of interest at the meeting.

3 7. The recording of the meeting was played to determine observe the
4 discussion that occurred at the board meeting.

5 8. At the outset of the virtual meeting, Mr. Pavia indicated that the Board would
6 be taking up the proposed resolution and that he would have to recuse himself from the
7 discussion. The Vice President read the resolution into the record that the Board would
8 employ Mr. Pavia as an office assistant for 40 hours a week from August 1, 2021, through
9 December 31, 2021, at a wage rate of \$15.00 per hour. One of the individuals attending
10 the meeting raised the possibility of a conflict of interest with Mr. Pavia serving as the
11 Board President while being employed as the office assistant. The individuals attending
12 went on to discuss the matter for an extended period of time.

13 9. After playing portions of the video, Petitioner acknowledged that everyone
14 attending and voting on the proposal knew the Mr. Pavia was the Board President and that
15 the Board was considering hiring him as a paid employee. Petitioner asserted that his
16 only issue with the meeting, aside from the decision itself, was that *Mr. Pavia* did not
17 disclose the conflict of interest.

18 10. At the conclusion of his presentation of evidence, Respondent moved for a
19 directed verdict because Petitioner failed to sustain his burden of proof.

20 11. The motion was well-taken and the matter concluded.

21 **CONCLUSIONS OF LAW**

22 1. The ADRE has authority over this matter. See A.R.S. Title 32, Ch. 20, Art.
23 11.

24 2. At an administrative hearing, the party asserting a claim, right, entitlement,
25 or affirmative defense has the burden of proof, and the standard of proof on all issues in
26 this matter is that of a preponderance of the evidence. Arizona Administrative Code R2-19-
27 119.

28 3. A preponderance of the evidence is:

29 The greater weight of the evidence, not necessarily established by the
30 greater number of witnesses testifying to a fact but by evidence that has the

1 most convincing force; superior evidentiary weight that, though not sufficient
2 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.

3 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4 4. A.R.S. § 33-1811 provides, in pertinent part, as follows:

5 If any contract, decision or other action for compensation taken by or on
6 behalf of the board of directors would benefit any member of the board of
7 directors . . . , that member of the board of directors shall declare a conflict of
8 interest for that issue. The member shall declare the conflict in an open
9 meeting of the board before the board discusses or takes action on that
issue and that member may then vote on that issue. Any contract entered
into in violation of this section is void and unenforceable.

10 5. Statutes should be interpreted to provide a fair and sensible result. *Gutierrez*
11 *v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011) (citation
12 omitted); *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) ("Courts will not
13 place an absurd and unreasonable construction on statutes.").

14 6. "Statutes shall be liberally construed to effect their objects and to promote
15 justice." A.R.S. § 1-211(B).

16 7. The purpose of A.R.S. § 33-1811 is to ensure that the members of a
17 homeowners association are aware of all conflicts of interest prior to any discussion of a
18 proposed contract, decision, or action for compensation, not to require that a specific
19 board member announce to those members that such a conflict of interest exists.

20 8. The fact that Mr. Pavia was not the board member to disclose the conflict
21 does not negate that the conflict was made known prior to any discussion and that the
22 conflict was discussed at length during the board meeting prior to any vote. Further, while
23 Mr. Pavia could have participated in the vote under the statute, he refrained from doing so
24 as to not present a conflict of interest.

25 9. Accordingly, Petitioner failed to sustain his burden of proof to establish that
26 Respondent acted in violation of A.R.S. § 33-1811.

27 **ORDER**

28 **IT IS ORDERED** that Petitioner's petition be dismissed.

NOTICE

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

Done this day, October 25, 2021.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile October 25, 2021 to:

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