

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Raymond M Uyleman,
4 Petitioner,

No. 22F-H2221006-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Casita Royale Townhomes Association,
7 Respondent.

8 **HEARING:** November 04, 2021 at 9:00 AM.

9 **APPEARANCES:** Raymond Uyleman ("Petitioner") appeared on his own behalf.
10 Natalie Terry appeared on behalf of Casita Royale Townhomes Association
11 ("Association" and "Respondent") with Carmel Ogle as a witness.

12 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

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14 After review of the hearing record in this matter, the undersigned Administrative
15 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
16 ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

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

22 2. On August 05, 2021, Petitioner filed a single issue petition¹ with the
23 Department which alleged that on or about March 16, 2021, the Association's then
24 President/Treasurer, Gary Knutson, unlawfully transferred his Board positions, as well as
25 the Association's bank account, to Natalie Terry and Carmel Ogle upon the sale of Mr.
26 Knutson's townhome, in violation of Article 4 sections 2 and 3, and Article 8 sections 2 and
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29 ¹ See Department's electronic file at HO22-21006_Petition&Narrative.pdf.
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3 of the Association's Bylaws.² Petitioner paid the requisite \$500.00 filing fee to the Department that same date.³

3. On August 25, 2021, Respondent returned its ANSWER to the Department whereby it denied all 4 of Petitioners' claims.⁴

4. On September 09, 2021, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing on November 04, 2021, to determine whether the following violations occurred:

Issue 1a – Alleged violation of CC&Rs Article 4 Section 2

Issue 1b – Alleged violation of CC&Rs Article 4 Section 3

Issue 1c – Alleged violation of CC&Rs Article 8 Section 2

Issue 1d – Alleged violation of CC&Rs Article 8 Section 3⁵

THE PARTIES AND GOVERNING DOCUMENTS

5. Respondent is a homeowners' association whose members own properties in the Casita Royale townhome community located in Phoenix, Arizona. Membership for the Association is comprised of Casita Royale townhome owners.

6. Petitioner is a Casita Royale townhome property owner and a member of the Association.

7. The Association is governed by its Covenants, Conditions, and Restrictions ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The CC&Rs empower the Association to control certain aspects of property use within the development. When a party buys residential property in the development, the party receives a copy of the CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract between the Association and each property owner.

8. Bylaws are mutually agreed upon operative rules, policies, and procedures for governing a homeowners association. They set qualifications for the election of directors, their number and term of office, their powers and duties, the appointment of officers, when and how meetings are held, quorum and voting requirements, appointment

² Petitioners later amended this violation to include the entirety of Section 5, not just subsection 5.5

³ See Department's electronic file at HO22-21006_Payment.pdf.

⁴ See Department's electronic file at HO22-21006_Respondent_Petition.pdf.

⁵ See Department's electronic file at HO22-21006_Notice_Hearing.pdf.

1 of committees, etc. Essentially, Bylaws exist to maintain and enhance the value of the
2 community and the assets within it.

3 a. The Association's Bylaws were adopted by the Association's Board of
4 Directors on June 14, 1977.⁶

- 5 i. Bylaws Article 4 Section 1, Number, states that, "The affairs of this
6 Association shall be managed by a Board of not less than five (5) or
7 more than nine (9) directors, who need not be members of the
8 Association.
- 9 ii. Bylaws Article 4 Section 2, Terms of Office, states that, "At the first
10 annual meeting, the members shall elect three (3) directors for a term
11 of one year, two (2) or three (3) directors for a term of two years and
12 not more than three (3) directors for a term of three years; and, at
13 each annual meeting thereafter, the members shall elect directors for
14 a term of three years to replace each vacancy."
- 15 iii. Bylaws Article 4 Section 3, Removal, states that, "Any director may
16 be removed from the Board, with or without cause, by a majority vote
17 of the members of the Association. In the event of death, resignation
18 or removal of a director, his successor shall be selected by the
19 remaining members of the Board and shall serve for the unexpired
20 term of his predecessor."
- 21 iv. Bylaws Article 4 Section 5, Action Taken Without a Meeting, states
22 that, "The directors shall have the right to take any action in the
23 absence of a meeting which they could take at a meeting by
24 obtaining the written approval of all the directors. Any action so
25 approved shall have the same effect as though taken at a meeting of
26 the directors."

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⁶ See Department's electronic file at HO22-21006_Bylaws.pdf.

1 v. Bylaws Article 8 Section 2, Election of Officer, states that, "The
2 election of officers shall take place at the first meeting of the Board of
3 Directors following each annual meeting of the members."

4 vi. Bylaws Article 8 Section 3, Term, states that, "The officers of this
5 Association shall be elected annually by the Board and each shall
6 hold office for one (1) year unless the officer shall sooner resign, or
7 shall be removed, or otherwise disqualified to serve."

8 **HEARING EVIDENCE**

9 1. Petitioner testified on his own behalf. Respondent called Carmel Ogle as a
10 witness and submitted Exhibits A-C into the record. The Department's electronic file and
11 NOTICE OF HEARING were also admitted into the record as their own exhibits. The
12 substantive evidence of record is as follows:

- 13 a. The Association was established in 1977. It consists of eight (8) individual
14 units that are independently owned by the homeowners who comprise the
15 Association's members.
- 16 b. The Association's five Board positions including President, Vice President,
17 Treasurer, and Secretary. Association members elect Board directors at the
18 Association's annual meeting, when necessary.
- 19 c. During a meeting on March 26, 2006, Gary Knutson was elected as the
20 Association's President and Treasurer, John Paquin was elected as the
21 Association's Vice President, and Carol Paquin was elected as the
22 Association's Secretary.
- 23 d. In November 2011, Ms. Paquin passed away. The vacant Secretary position
24 was never filled.
- 25 e. In January 2014, Mr. Paquin resigned his position and relocated out of state.
26 The vacant Vice Presidency position was never filled.
- 27 f. After Mr. Paquin's departure, Mr. Knutson was the only remaining member
28 of the Board in January 2014. At that time, Mr. Knutson unilaterally took on
29 the role of every Board position. No meeting was ever called after that date
30 to elect Mr. Knutson or anyone else to the Board.

- 1 g. On or about March 25, 2021, Mr. Knutson issued a letter to the Association's
2 members to provide notice that he was selling his townhome, and that he
3 had selected Natalie Terry as his Presidential successor and Carmel Ogle
4 as his Secretarial successor.⁷
- 5 i. The transfer of the Association's assets from Mr. Knutson to Ms.
6 Terry and Ms. Ogle took place on April 04, 2021.
- 7 h. On April 17, 2021, Ms. Terry and Ms. Ogle hosted an informal "Meet and
8 Greet" with community residents. Board positions were discussed and no
9 objections were made by any Association member.⁸
- 10 i. On May 11, 2021, Petitioner, who had previously been renting in the
11 community since February 2012, purchased a townhome in the Casita
12 Royale development whereby he became a member of the Association.
- 13 j. On June 25, 2021, Petitioner requested that an annual meeting be held.
14 Although Petitioner was told "yes," no such meeting, or Board member
15 election, has taken place to date.
- 16 k. On July 20, 2021, the Association issued a letter to Petitioner to advise that
17 because his unapproved outside cameras were recording his neighbor's
18 patios in violation of ARIZ. REV. STAT. § 13-3019, he had to move their
19 positioning.⁹
- 20 l. On or about July 24, 2021, Petitioner publically alleged that Ms. Terry and
21 Ms. Ogle could not hold their respective Board offices because each had
22 felony records.¹⁰
- 23 i. Between December 21, 1990, and June 17, 2002, Ms. Terry was
24 sentenced on four (4) separate occasions for criminal convictions in
25 Yuma and/or Maricopa Counties.¹¹

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27 ⁷ See Department's electronic file at HO22-21006_Response_Petition_Exhibits.pdf; see also Respondent Exhibit B.

28 ⁸ See Respondent Exhibit C.

29 ⁹ See Department's electronic file at HO22-21006_Response_Petition_Exhibits.pdf.

30 ¹⁰ See Department's electronic file at HO22-21006_SupplementsPetition.pdf.

¹¹ *Id.*

1 ii. On December 07, 2015, Ms. Ogle was sentenced for a criminal
2 conviction in Cochise County.¹²

3 Petitioner also accused Ms. Terry and Ms. Ogle of “ruining the pool” due to
4 their lack of managerial skills, and that they “ruined the property” by failing to
5 water the common areas. Petitioner further alleged that Ms. Terry and Ms.
6 Ogle failed to address the community’s “feral cat” issue.

7 m. The Association did not hold an annual meeting in 2021. The current Board
8 plans to hold an annual meeting in 2022, the exact date of which is
9 unknown.

10 2. In closing, Respondent argued that Petitioner’s attempt to “make up rules”
11 do not outweigh or take precedence over the community’s governing documents. Per
12 Respondent, Ms. Terry and Ms. Ogle are merely acting as “fillers” until the Association’s
13 annual meeting may be held and Board members can be voted in to replace them and the
14 other vacant positions. Ultimately, Respondent beseeched the Tribunal to deny
15 Petitioners’ appeal.

16 3. In closing, Petitioner argued that he did not want “felons” running his
17 homeowners’ association, and opined that Ms. Terry and Ms. Ogle should have been
18 subject to a background check prior to accepting their positions from Ms. Knutson.
19 Petitioner demanded that the undersigned remove Ms. Terry and Ms. Ogle from their
20 respective Board positions because “they illegally seated themselves into office by means
21 of fraud.” Petitioner also requested that a financial audit for the prior sixty (60) months be
22 performed by a certified public accountant.

23 **CONCLUSIONS OF LAW**

24 1. This matter lies within the Department’s jurisdiction pursuant to ARIZ. REV.
25 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
26 planned community association. The owner or association may petition the department
27 for a hearing concerning violations of community documents or violations of the statutes
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29 ¹² *Id.*

1 that regulate planned communities as long as the petitioner has filed a petition with the
2 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

3 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
4 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
5 case at bar. OAH has the authority to interpret the contract between the parties.¹³

6 3. In this proceeding, Petitioner bears the burden of proving by a
7 preponderance of the evidence that Respondent violated Article 4 sections 2 and 3, and
8 Article 8 sections 2 and 3 of the Association's Bylaws.

9 4. "A preponderance of the evidence is such proof as convinces the trier of fact
10 that the contention is more probably true than not."¹⁴ A preponderance of the evidence is
11 "[t]he greater weight of the evidence, not necessarily established by the greater number of
12 witnesses testifying to a fact but by evidence that has the most convincing force; superior
13 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
14 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
15 the other."¹⁵

16 5. In Arizona, when construing statutes, we look first to a statute's language as
17 the best and most reliable index of its meaning. If the statute's language is clear and
18 unambiguous, we give effect to that language and apply it without using other means of
19 statutory construction, unless applying the literal language would lead to an absurd result.
20 Words should be given "their natural, obvious, and ordinary meaning."¹⁶

21 6. Statutes should be interpreted to provide a fair and sensible result.
22 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
23 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable
24 construction on statutes.").

25 7. When the legislature uses a word or words in one section of a statute, but
26 not another, the tribunal may not read those words into the section where the legislature

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28 ¹³ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ¹⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ¹⁵ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

¹⁶ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

1 did not include them.¹⁷ Unless defined by the legislature, words in statutes are given their
2 ordinary meanings.¹⁸

3 8. Each word, phrase, clause, and sentence of a statute or rule must be given
4 meaning so that no part will be void, inert, redundant, or trivial.¹⁹

5 9. Based upon a review of the credible and relevant evidence in the record,
6 Petitioner sustained his burden of proof.

7 10. The only issue before this Tribunal is whether Mr. Knutson unlawfully
8 transferred his Board positions, as well as the Association's bank account, to Ms. Terry
9 and Ms. Ogle upon the sale of his townhome, in violation of Bylaws Article 4 sections 2
10 and 3 and Article 8 sections 2 and 3.

11 11. While it is unclear whether five (5) Board positions were filled as a result of
12 the election on March 26, 2006, it is clear, however, that there should have been multiple
13 annual meetings, on an as needed rotating basis, held between 2011 and 2021 to elect a
14 requisite number of Board members. The Association's Bylaws clearly indicate that there
15 must be no less than five (5) Board members, and that elections for those positions must
16 be held at annual meetings every 1-3 years. Even if the language were to be interpreted
17 as Board "positions," instead of individualized members, there still would have had to be
18 several annual meetings held where members voted during the time period at issue to
19 elect Mr. Knutson to all three (3) of the positions he held at the time of his resignation.
20 Therefore, it cannot be concluded that the Board positions Mr. Knutson bestowed on Ms.
21 Terry and Ms. Ogle were done in accordance with the community's governing documents.

22 12. The fact that the Association did not schedule an annual meeting in 2021,
23 despite its obligation to do so under pursuant to the Bylaws or Petitioner's request, is a red
24 herring because the current year has not concluded. As are Ms. Terry's and Ms. Ogle's
25 criminal backgrounds, as no evidence in the record supports Petitioner's contention that
26 they should have been subjected to background checks.

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28 ¹⁷ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

29 ¹⁸ *Id.*

30 ¹⁹ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

13. Based on the credible and relevant evidence of record, the undersigned finds that Petitioner sustained his burden of proof by a preponderance of the evidence. Respondent is in violation of Bylaws Article 4 Section 2, and Article 8 Sections 2 and 3.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioners' petition is granted in part, and denied in part.

IT IS FURTHER ORDERED that Respondent shall henceforth comply with Bylaws Article 4 Section 2, and Article 8 Sections 2 and 3.

IT IS FURTHER ORDERED that Respondent reimburse $\frac{3}{4}$ of Petitioner's filing fee (e.g. \$375.00) in certified funds.

IT IS FURTHER ORDERED that Petitioner's prayer to remove the Association's current Board from office is denied.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five days from the date of that certification.

NOTICE

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

Done this day, November 22, 2021.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile November 22, 2021 to:

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