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No. 22F-H2221019-REL

ADMINISTRATIVE LAW JUDGE DECISION

Respondent.

APPEARANCES: Petitioner Brenda Norman appeared on her own behalf via Google Meet. Respondent Rancho Del Lago Community Association was represented by Mackenzie Hill, Esq. and Nathan Tennyson, Esq. who appeared via Google Meet.

4. Petitioner testified that her neighbor installed flood lights on the side of its house which shined into her backyard and into her residence. Petitioner testified that the

neighbor was in violation of the CC&Rs because the CC&Rs require that all flood lights be directed toward the owner's property and away from neighboring property. Petitioner testified that to date the lights still shine onto her property and that RDLCA has done nothing to help remedy the situation. Petitioner requested that RDLCA fine her neighbors until they comply or force them to remove the fixture and come up with a different lighting solution.

5. Spencer Brod was the community manager and provided testimony for Respondent. Mr. Brod stated that he believed that Petitioner had an ulterior motive in filing this case as she had an ongoing feud with her neighbor.

6. Mr. Brod testified that on August 11, 2021, RDLCA received a complaint from Petitioner about the flood lights.¹ Mr. Brod testified that the property management company investigated and drafted correspondence on August 17, 2021, to the Petitioner's neighbor. The correspondence requested that the lights must be removed as they were shining towards Petitioner's home.² The neighbor then sent an e-mail to the property management company stating that the light was not working and was going to have an electrician come and fix the same, as well as ensuring that the light would not shine onto Petitioner's property.³ After a short delay, the neighbor replaced the light fixture.

7. Mr. Brod then testified that on September 19, 2021, Petitioner e-mailed the property management company stating that a different fixture was installed, "and angled the bulbs at more of downward angle."⁴ Mr. Brod also testified that the property management company sent an e-mail to Petitioner informing her that the floodlights were now in compliance.⁵ Mr. Brod also testified as to the photograph in Exhibit J which was taken on January 5, 2021, demonstrating that the fixture was facing downward. However, Mr. Brod testified that if the fixture were to be pointed towards Petitioner's property, they would investigate the same and go through the same procedure again.

¹ See Respondent's Exhibit B.

² See Respondent's Exhibit D.

³ See Respondent's Exhibit E.

⁴ Respondent's Exhibit H.

⁵ See Respondent's Exhibit I.

1 8. Mr. Brod also testified that Petitioner's neighbor did not have the lights
2 approved by RDLCA as the specific CC&R in question was only controlling for lights on
3 the front of the house and not as to backyard or side yard lights, thus approval was not
4 required.

5 **CONCLUSIONS OF LAW**

6 1. Arizona statute permits an owner or a planned community organization to
7 file a petition with the Department for a hearing concerning violations of planned
8 community documents or violations of statutes that regulate planned communities.
9 A.R.S. § 32-2199. That statute provides that such petitions will be heard before the Office
10 of Administrative Hearings.

11 2. Petitioner bears the burden of proof to establish that Respondent committed
12 the alleged violations by a preponderance of the evidence. See ARIZ. REV. STAT. section
13 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazzano v. Superior Court*, 74
14 Ariz. 369, 372, 249 P.2d 837 (1952). Respondent bears the burden to establish affirmative
15 defenses by the same evidentiary standard. See A.A.C. R2-19-119(B)(2).

16 3. “A preponderance of the evidence is such proof as convinces the trier of fact
17 that the contention is more probably true than not.” MORRIS K. UDALL, ARIZONA LAW OF
18 EVIDENCE § 5 (1960). A preponderance of the evidence is “[t]he greater weight of the
19 evidence, not necessarily established by the greater number of witnesses testifying to a fact
20 but by evidence that has the most convincing force; superior evidentiary weight that, though
21 not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a
22 fair and impartial mind to one side of the issue rather than the other.” BLACK’S LAW
23 DICTIONARY at page 1220 (8th ed. 1999).

24 4. Section 3.1(D)(3) of the CCR’s provide, in pertinent part, as follows:

25 D. Specific approval conditions, exclusions, etc. for lighting projects:
26 (3) Flood illumination is to be directed at owner’s property away from
27 neighboring property (gazebos, ramadas, recreation areas, trees, cactus,
28 and ornamentation), actual wattage and quality of flood lighting will be
29 reviewed with submittal.

30 5. At the outset, neither party submitted the full Section 3.1 of the CC&R’s and
the ALJ therefore cannot determine if the section in question applies to the front yard only.

1 That being said, the August 17, 2021 Petitioner, referenced this section and stated that
2 Petitioner's neighbor installed the light without ARC approval. No evidence was supplied
3 demonstrating that the lights had the ARC approval.

4 6. Because this never occurred, Respondent is in violation of CC&R Section
5 3.1(D)(3).

6 7. Petitioner requested as a remedy that the RDLA fine her neighbor or force
7 RDLA to make her neighbor remove the lights.

8 8. A.R.S. § 32-2199.02, provides, in pertinent part, as follows:

9 A. The administrative law judge may order any party to abide by the
10 statute, condominium documents, community documents or contract
11 provision at issue and may levy a civil penalty on the basis of each
12 violation.

13 9. The Administrative Law Judge does not have the authority under the
14 applicable statute to order that RDLCA fine or order the neighbor remove the lights.

15 **IT IS ORDERED** that Petitioner be deemed the prevailing party in this matter, and
16 RDLCA must comply with Section 3.1(D)(3).

17 **IT IS FURTHER ORDERED** that Respondent pay Petitioner her filing fee of
18 \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

19 No Civil Penalty is found to be appropriate in this matter.

20 NOTICE

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

26 Done this day, January 18, 2022.

27 /s/ Adam D. Stone
28 Administrative Law Judge
29

Transmitted by either mail, e-mail, or facsimile January 18, 2022 to:

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Commissioner
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