

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Gregory Ehle

No. 22F-H2222031-REL

4 PETITIONER,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 VS.

6
7 Fulton Ranch Homeowners Association

8 RESPONDENT.

9

HEARING: June 21, 2022

10 **APPEARANCES:** Petitioner Gregory Ehle appeared on behalf of himself. Emily
11 Mann, Esq. appeared on behalf of Respondent Fulton Ranch Homeowners Association.

12 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson
13

14 **FINDINGS OF FACT**

15 1. On or about February 2, 2022, Petitioner Gregory Ehle filed a petition with
16 the Arizona Department of Real Estate (AZDRE) alleging that Respondent Fulton
17 Ranch Homeowners Association (Fulton Ranch) violated Arizona Revised Statutes
18 (A.R.S.) § 33-1804.

19 2. In the petition, Mr. Ehle alleged a total of four claims. However, Mr. Ehle
20 only paid \$500 for the petition. The tribunal provided Mr. Ehle with additional time to pay
21 the additional \$1,500 for the four claims. However, Mr. Ehle failed to make the
22 additional payment. The tribunal requested that Mr. Ehle choose the sole issue from his
23 petition to proceed with at hearing. However, Mr. Ehle failed to respond. Mr. Ehle failed
24 to attend the prehearing conference where Mr. Ehle could have clarified the sole issue
25 to be determined at hearing. Therefore, the Administrative Law Judge, in the interests of
26 fairness and judicial economy, determined that the sole issue for hearing would be an
27 alleged violation of A.R.S. § 33-1804(E)(2) regarding an emergency meeting of the
28 board members.

29 3. Mr. Ehle's petition provided, in relevant part, as follows:
30

.....
Based on AZ Department of Real Estate that governs AZ HOA compliance issues, the statute calls out in Title 33, Chapter 16 of Planned Communities, Article 1, 33-1804, subsection E.2, the planned community Board must convene an emergency meeting to provide consensus approval of any urgent board matters. And **in subsection E.3, if that meeting is concluded, minutes of that emergency meeting need to be published in the next regularly scheduled HOA Board meeting, in this case, November 19, 2020. The Fulton Ranch Board meeting was conducted on 11/19/20 and did not call out this provision of an emergency meeting conducted in October in the 11/19/20 scheduled meeting. The previous Fulton Ranch HOA Board meeting to November 19 2020 was September 25 2020. No October 2020 HOA Board was scheduled.**
.....

4. On March 17, 2022, the AZDRE issued a Notice of Hearing setting the petition for hearing at the Office of Administrative Hearings on May 6, 2022.

5. Mr. Ehle filed a motion to continue the hearing. The motion was granted and the hearing was reset for June 21, 2022.

6. A hearing was held on June 21, 2022.

7. At hearing, Mr. Ehle testified on behalf of himself. Fulton Ranch presented the testimony of Kevin Hearty, the Division Vice President for Fulton Ranch's Community Manager.

8. Mr. Ehle conceded at the hearing that he was unaware of whether an emergency board meeting was held. However, Mr. Ehle contended that an emergency board meeting should have been held regarding a November 12, 2020 notice from Fulton Ranch that it would no longer respond to Mr. Ehle's emails unless the emails were related to Mr. Ehle's specific account.

9. Fulton Ranch presented credible testimony through Mr. Hearty that an emergency board meeting was not held during any time period from September 2020 to

November 12, 2020. Fulton Ranch further contended that an emergency board meeting was not required under A.R.S. § 33-1804(E)(2).

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.¹ Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. Petitioner bears the burden of proof to establish that Respondent violated the Act or Respondent's CC&Rs by a preponderance of the evidence.² Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.³

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁴ A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient 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."⁵

4. A.R.S. § 33-1804 provides:

.....

E. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.
2. An emergency meeting of the board of directors **may** be called to discuss business or take action that cannot be delayed for the forty-eight hours required for notice. At any

¹ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.

² See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

³ See A.A.C. R2-19-119(B)(2).

⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 emergency meeting called by the board of directors, the board
2 of directors may act only on emergency matters. The minutes
3 of the emergency meeting shall state the reason necessitating
4 the emergency meeting. The minutes of the emergency
meeting shall be read and approved at the next regularly
scheduled meeting of the board of directors.

5 3. A quorum of the board of directors may meet by means of a
6 telephone conference if a speakerphone is available in the
7 meeting room that allows board members and association
members to hear all parties who are speaking during the
meeting.

8 Emphasis added.

9 5. The weight of the evidence shows that Fulton Ranch did not hold an
10 emergency board meeting regarding Fulton Ranch's decision to cease responding to
11 Mr. Ehle's e-mails unless the e-mails were related to Mr. Ehle's specific account.

12 6. While A.R.S. § 33-1804(E)(2) allows the Board of Directors to conduct an
13 emergency board meeting, the statute does require that the Board of Directors hold an
14 emergency board meeting. Mr. Ehle failed to provide any legal authority in his petition or
15 at hearing to support his contention that the Board was required to hold an emergency
16 board meeting.

17 7. Therefore, the Administrative Law Judge concludes that Mr. Ehle has
18 failed to establish that Fulton Ranch violated A.R.S. § 33-1804(E)(2) and the petition
19 should be dismissed.

20 **RECOMMENDED ORDER**

21 **IT IS ORDERED** that Gregory Ehle's petition against Fulton Ranch is dismissed.

22 Done this day, July 11, 2022.

23 /s/ Velva Moses-Thompson
24 Administrative Law Judge

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26 Transmitted electronically to:

27 Louis Dettorre, Commissioner
28 Arizona Department of Real Estate
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NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 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, July 11, 2022.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile July 11, 2022 to:

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By Miranda Alvarez
Legal Secretary