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No. 22F-H2222049-REL

ADMINISTRATIVE LAW JUDGE DECISION

VS

Respondent

APPEARANCES: Petitioner John Zumph appeared on his own behalf. Independent Sanalina Homeowners Association was represented by Nick Eicher, Esq.

FINDINGS OF FACT

5. On or about May 19, 2022, Sanalina filed a written answer to the petition, denying that it had violated the Bylaws.

1 6. A hearing was held on July 19, 2022, at the Office of Administrative
2 Hearings, an independent state agency.

3 7. At hearing Mr. Zumph testified that after serving seven years on the Board,
4 he was removed from his position on March 10, 2022.

5 8. Mr. Zumph testified that he became frustrated because two members of the
6 six member Board were from one household. To that end, he sent an e-mail in early July
7 before the regularly scheduled bi-monthly meeting, which stated the following:

8 As only 3 board members attended the emergency executive
9 meeting, we are upset and in disbelief of the other board members
10 whooping not to attend. The inaction of the current president is
11 unethical and need to be removed. As stated in the previous
12 meeting, Joe, Pete, and I, John will not be attending any further
13 board meeting this year. We will attend the annual board meeting in
14 February or March.

15 We are willing to meet if the following conditions are met.

16 One of the residents from the same household needs to resign.

17 The current president needs to relinquish his post.

18 If these concessions are met we will consider returning to board
19 meetings. If they are not met we will continue to remain absent from
20 all future meetings.¹

21 (All errors contained in original).

22 9. Mr. Zumph testified that he missed the July meeting, the September
23 meeting because he was recovering from back surgery, and the November meeting.

24 10. Mr. Zumph testified that he was wrongfully removed from the Board, as he
25 did not miss three consecutive meetings. Mr. Zumph argued that because there was no
26 quorum at those three meetings, there was no meeting to miss. Mr. Zumph testified that
27 he was not contesting that a quorum existed during the meeting in which he was removed.

28 11. Respondent presented the testimony of Lisa Terror and offered seven
29 exhibits into evidence.

30 12. Ms. Terror was the Secretary of the Board. She testified that meetings were
held in July, September, and November, but no business or votes could be conducted
because there was no quorum. Ms. Terror testified that homeowners were present at the

¹ See Respondent's Exhibit 3.

meetings, and were given community updates by the Community Manager, thus she believed that meetings properly occurred.

13. Ms. Terror also testified that because of Mr. Zumph's failure to appear as well as the other two Board members, many homeowner's issues were delayed such as architectural appeals and other disputes. Further, Ms. Terror testified that because of the delays caused by the absences, the cost to paint the walls increased to \$9,000.00 because no vote could timely occur and the price had gone up since the initial proposal.

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. 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 Bylaws Section VII Section 1(d) 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. Article VII in the Sanalina bylaws established the powers and duties of the Board. Section 1(d) states in pertinent part,

The Board of Directors shall have the power to:...(d) declare the office of a member of the Board of Directors to be vacant in the event

² See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano 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 such member shall be absent from three (3) consecutive regular
2 meetings of the Board of Directors...⁶

3 5. Article VI was entitled, "Meetings of Directors", and states in pertinent part:

4 Section 1. Regular Meetings. Regular meetings of the Board of
5 Directors may be held without notice, at such place and hour as may
6 be fixed from time to time by the Board...

7 ...
8 Section 3. Quorum. A majority of the number of Directors shall
9 constitute a quorum for the transaction of business. Every act or
10 decision done or made by a majority of the Directors preset at a duly
11 held meeting at which a quorum is present shall be regarded as the act
12 of the Board.⁷

13 6. Mr. Zumph does not challenge that he was removed during a meeting at
14 which a quorum existed. He does challenge however, that because there was no quorum
15 at the July, September, and November meetings, the meetings did not exist, and therefore
16 he did not miss three consecutive meetings. The tribunal believes this argument is
17 unpersuasive. The tribunal finds that a meeting can exist without a quorum, but no
18 business (votes) can occur. That is what happened here. Board members were present
19 at a regularly scheduled meeting along with homeowners and the Community Manager.
20 Issues were discussed and updates were given, but no business could be transacted.

21 7. Further, Mr. Zumph *intentionally* missed the meetings to try to get the make-
22 up of the Board to change. Because of this, numerous issues could not be voted on by the
23 Board thus harming the rest of the homeowners. This was probably why Article VII Section
24 (1)(d) was enacted. It is not fair or just to homeowners to wait over eight months to have
25 their concerns/appeals voted on. For Mr. Zumph and his cronies to "hijack" the process and
26 stop association business from being transacted was unacceptable and not in good faith
27 nor in the spirit of the bylaws.

28 8. Therefore, Petitioner did not establish that Respondent violated the Bylaws
29 Article VII(1)(d).
30

⁶ See Respondent's Exhibit 2.

⁷ *Id.*

ORDER

IT IS ORDERED that Petitioners' petition is denied.

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, August 1, 2022.

/s/ Adam D. Stone
Administrative Law Judge

Transmitted electronically to:

Louis Dettorre, Commissioner
Arizona Department of Real Estate

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