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**No. 22F-H2222038-REL**

## ADMINISTRATIVE LAW JUDGE DECISION

The Meadows Homeowners Association  
Respondent

**APPEARANCES:** Petitioner Evin Abromowitz appeared on her own behalf. Respondent The Meadows Homeowners Association was represented by Nicholas J. Gagliardi, Esq.

## FINDINGS OF FACT

2. Respondent is a homeowners' association whose members own properties in a residential real estate development located in Tucson, Arizona.

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

5. On or about April 3, 2012, Respondent's Amended and Restated CC&Rs were recorded with the Maricopa County Recorder's Office.

1           6.       Respondent's CC&Rs Article Section 3.5, Power to Adopt Rules and  
2 Regulations, provides, in pertinent part, as follows:

3           **3.5 Power to Adopt Rules and Regulations.** The Association may adopt,  
4 amend, repeal and enforce rules and regulations ("Rules and Regulations")  
5 as may be deemed necessary or desirable with respect to the interpretation  
6 and implementation of this Declaration, the operation of the Association, the  
7 use and enjoyment of Common Area and each of the Parcels. The Rules &  
8 Regulations shall be reasonable and uniformly applied.

9           **3.5.1.** The Rules & Regulations shall be effective only upon adoption by  
10 resolution of the Board of Directors. Notice of the adoption, amendment or  
11 repeal of any Rule or Regulation shall be given in writing to each Member at  
12 his/her address in the Association's records, and copies o[f] the currently  
13 effective Rules & Regulations shall be made available to each Member  
14 upon request and payment of the reasonable expense of copying the same.

15           **3.5.2.** Each Member shall comply with the Rules & Regulations and shall  
16 see that all persons who are occupants of a Unit shall comply with such  
17 Rules & Regulations.

18           **3.5.3.** The Rules & Regulations shall have the same force and effect as if  
19 they were set forth in and were part of this Declaration. In the event of a  
20 conflict between the Rules & Regulations and the provisions of this  
21 Declaration, the provisions of this Declaration shall prevail.

22           7.       Respondent's CC&Rs Section 3.6, Power to Enforce Declaration and Rules  
23 & Regulations, provides, in pertinent part, as follows:

24           **3.6. Power to Enforce Declaration and Rules & Regulations.** The  
25 Association shall have the power to enforce the provisions of this  
26 Declaration and of Rules & Regulations by any lawful remedy or means, and  
27 shall take such action as the Board deems necessary or desirable to cause  
28 such compliance by each Member and any employee, agent or tenant of  
29 such Member.

30           8.       In June 2021, Respondent adopted a set of Rules and Regulations and Fine  
Guidelines. The Rules and Regulations had eight sections including the following:

1. **Common Areas and Building Exteriors**

a. This section concerns conduct on the Association's Common Area and Residents' conduct with regards to the exteriors of the buildings within the Association (e.g. rooftops).

2. **Vehicles**

a. This section concerns vehicle parking and storage within the Association. It contains rules regarding both the Association's Common Area roadways and Residents' storage of vehicles on their Lots.

1       **3. Carports**

2       a. This section addresses Residents' maintenance and use of their carports  
3       on their Lots within the Association.

4       **4. Balconies**

5       a. This section addresses Residents' use and maintenance of the balconies  
6       connected to their Lot within the Association.

7       **5. Structures/Buildings**

8       a. This section addresses Residents' conduct with regards to the insurance  
9       on their Unit within the Association and conduct related to installing devices  
10      and decorations on their Units.

11      **6. Swimming Pools**

12      a. This section addresses conduct in the Association's Common Area  
13      swimming pool area.

14      **7. Animals**

15      a. This section addresses Residents' ownership of pets within the  
16      Association.

17      **8. Miscellaneous Rules**

18      a. This section concerns several topics, including signs within the  
19      Association, window coverings on the buildings within the Association, and  
20      water usage within the Association.

21               9.       The Fine Guidelines applied to violations of the Declaration as well as the  
22      Respondent's Rules. The Guidelines stated, in pertinent part, as follows:

23               1. No fine shall be assessed until the Member who has committed a  
24               violation has been given due written notice and an opportunity for a hearing.

25               2. Presumptive fines are as follows:

26               ...

27                       O. Harassing/hindering our maintenance staff or HOA Board or our  
28                       community manager from doing their work. \$100.00.

29               ...

30                       Q. Verbal/Physical Abuse of HOA Board, maintenance staff,  
                             community manager: \$500.00.

                     ...

                     6. The amounts of the: 1) presumptive fines above, 2) other fines, 3) daily  
                     fines, and 4) increasing fines of similar violations are mere guidelines. The  
                     Board shall have the specific authority to deviate from these guidelines by  
                     applying the factors below:

- The seriousness of the violation(s).
- Whether this is a first violation or a continuing violation(s).
- Whether the type of offense poses a danger to property or any person.
- Whether the Owner agrees in good faith to correct the violation(s) within the time specified by the Board of Directors.

- Whether the amount is sufficient to obtain compliance, based on the facts.
- Impact on property values.
- Any extenuating circumstances including hardship.

10. The Rules and Fine Guidelines were reviewed and approved by Respondent's legal counsel and were ultimately duly-adopted by Respondent's Board of Directors.

11. On or about December 22, 2021, Petitioner sent an email to Lynn Mader, Respondent's manager and President, and Jacklyn Connoy, Respondent's assistant community manager, that stated as follows:

Lynn, take your attitude and your half a brain cell and do us all a favor and jump off a cliff. You're an asshole and [] liar and not worth a shit! Go fuck yourself you stupid bitch!!!!

12. On or about January 27, 2022, Petitioner sent an email to Ms. Mader and Ms. Connoy that stated as follows:

And by the way, my dues go towards your salaries, so I expect replies to my emails. I know you both have the maturity levels of 7<sup>th</sup> graders, but in the real world you are supposed to be 70 some year old professionals. Act like adults please! You are clearly demonstrating you play favorites. Grow up and do your jobs! This isn't a popularity contest, it's an HOA – a business.

13. On or about February 2, 2022, Petitioner sent an email to Ms. Connoy which stated as follows:

You don't need to act like a jerk. Very unbecoming of a property manager. That email was followed within minutes by another email to Ms. Connoy which stated as follows:

Oh but wait! My bad! You don't know how to do your job. So sorry for that mistake!

14. On or about January 27, 2022, the Association was informed that the Petitioner had interrupted contractors who were performing roof repairs on other Units within the community.

15. Based the emails and the interruption of the roofing contractors, the Association delivered a violation/fine notice to the Petitioner dated February 7, 2022,

1 which called the Petitioner to a violation hearing regarding the conduct cited above.  
2 Specifically, the letter stated as follows:

3 This is to inform you the Meadows HOA board is calling you to a violation  
4 hearing. This is a Zoom meeting to address derogatory emails and  
interfering with vendors.

5 Fine Guidelines: No fine shall be assessed until the Member who has  
6 committed a violation has been given due written notice and an opportunity  
7 for a hearing.

8 1. Derogatory comments received via email addressed to Lynn Mader,  
9 HOA President/HOA Manager/ADAM LLC. This violation carries a \$500.00  
fine.

10 2. Derogatory comments received via email addressed to Jacklyn  
11 Connoy, Owner/ADAM LLC. This violation carries a \$500.00 fine.

12 3. Hindering a hired vendor from their work at another property in The  
13 Meadows. This violation carries a \$100.00 fine.

14  
15 16. Petitioner did not appear for the hearing on the fines.

16 17. On or about March 14, 2022, Petitioner filed a single-issue petition with the  
17 Department which alleged that Respondent The Meadows Homeowners Association  
18 violated its Covenants, Conditions, and Restrictions (CC&Rs), Section 3.5 and 3.6 with  
19 respect to three different violations she had been alleged to have committed and for which  
20 she had been fined. In an attached narrative, Petitioner detailed her complaint as follows:

21 The rules regarding derogatory language cannot be deemed related to the  
22 CC&Rs because it is unrelated to the operation of the Association or  
property.

23 Violation #1 is unrelated to the property and took place on December 22,  
24 2021, 47 days before the date of the violation letter...

25 Violation #2 is unrelated to the property. Telling someone they're acting like  
26 a jerk is technically not derogatory.

27 Violation #3 is false.

28 The reason I stopped by my building to inquire about the work that  
29 was being done there was because I sent Lynn Mader and Jacklyn Connoy  
30

1 an email at 8:55am, and again at 10:12am. This was after I received a  
2 message from my tenants about people working on my building. They were  
3 asked to move their car. They had no notice of work being done on the  
4 property.

5 After not having received a response from either email from Lynn  
6 Mader or Jacklyn Connoy, I emailed both of them at 3:03pm informing them  
7 that I spoken with the vendor. The conversation was brief (under 2 minutes).  
8 The gentleman was very nice and explained what they were doing, and their  
9 work was in no way hindered.

10 This incident occurred on January 27, 2022, 11 days before the date  
11 of the violation letter sent. I received nothing addressing this before then.

12 The only way Lynn Mader and Jacklyn Connoy knew I interacted with  
13 the vendor, according to their evidence, was from an email I sent them  
14 telling them about my interaction.

15 18. On or about April 5, 2022, Respondent returned its ANSWER to the  
16 Department whereby it denied all complaint items in the petition.

17 19. Per the NOTICE OF HEARING, the Department referred this matter to the  
18 Office of Administrative Hearings (OAH), an independent state agency, for an evidentiary  
19 hearing, regarding the following issue:

20 **Petitioner presents this matter to the court per Petitioner's claim that**  
21 **Respondent has violated the Amended and Restated Declaration of**  
22 **Covenants, Conditions and Restrictions of Monte Catalina Estates**  
23 **AKA The Meadows ("CC&R"). Petitioner states in her petition that "the**  
24 **violations are not reasonable under the circumstances", and cites**  
25 **sections 3.5 and 3.6, of the CC&R.**

26 20. Petitioner testified on her own behalf and presented the testimony of  
27 Carolyn Davis, Shannon Kelsey, and Patrick Scott. Respondent presented the testimony  
28 of Ms. Mader.

29 21. In her own testimony and through the questioning of her witnesses,  
30 Petitioner attempted to question the validity of the alleged violations raised in the February  
7, 2022 letter from Respondent. Petitioner was reminded that the hearing was not  
regarding her alleged violations, but her single issue that Respondent had violated  
Section 3.5 and 3.6 of the CC&Rs through its enactment and enforcement of the rules and  
regulations.

22. In Petitioner's closing, she admitted that Respondent could make rules, but believed that the rules were not properly enforced against her.

23. In closing, Respondent argued that it was authorized to enact rules and had done so in 2021, when it approved the rules at issue in this matter.

### **CONCLUSIONS OF LAW**

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 *et seq.*, regarding a dispute between an owner and a planned community association. The owner or association may petition the Department for a hearing concerning violations of community documents or violations of the statutes that regulate planned communities as long as the petitioner has filed a petition with the Department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 *et seq.* OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.<sup>1</sup>

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated a community document.<sup>2</sup>

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."<sup>3</sup> 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."<sup>4</sup>

5. Based upon a review of the credible and relevant evidence in the record, Petitioner failed to sustain her burden of proof.

6. Here, the material facts are clear. Respondent was authorized to enact rules and regulations relating to the operation of the association. The rules at issue in this

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<sup>1</sup> See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

<sup>2</sup> See ARIZ. ADMIN. CODE R2-19-119.

<sup>3</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>4</sup> BLACK'S LAW DICTIONARY 1220 (8<sup>th</sup> ed. 1999).

1 matter relate to the operation of the association. Further, Respondent was authorized to  
2 enforce the rules and regulations it promulgated.

3 7. While Petitioner may have wanted to argue that the alleged violations  
4 brought against her were not proper, she did not raise that issue in her Petition.

5 8. Therefore, the undersigned Administrative Law Judge concludes that,  
6 because Petitioner failed to establish a violation of Section 3.5 or 3.6 of the CC&Rs, her  
7 petition must be denied.

8 **ORDER**

9 Based on the foregoing,

10 **IT IS ORDERED** denying Petitioner's petition.

11 **NOTICE**

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

17  
18 Done this day, August 22, 2022.

19 /s/ Tammy L. Eigenheer  
20 Administrative Law Judge  
21

22 Transmitted by either mail, e-mail, or facsimile August 22, 2022 to:

23 Louis Dettorre, Commissioner  
24 Arizona Department of Real Estate  
25 100 N. 15th Avenue, Suite 201  
26 Phoenix, Arizona 85007  
27 Attn:  
28 AHansen@azre.gov  
29 vnunez@azre.gov  
30 djones@azre.gov  
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9 Legal Secretary