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No. 22F-H2222060-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEARANCES: Lucas Thomas, Owner, appeared on behalf of M&T Properties David Rivandi, Director, appeared on behalf of Respondent Kivas Uno owners' Association.

FINDINGS OF FACT

2. On or about June 6, 2022, M&T Properties LLC (Petitioner) filed a petition with the Arizona Department of Real Estate (Department), alleging that Respondent had violated Section 6.7 of the First Amendment to the Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for Kivas Uno Condominium (CC&Rs). Petitioner indicated they were claiming one issue in the Petition and paid the required \$500.00 filing fee.

- Petitioner states that the Respondent is in violation of the Amended and Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for Kivas Uno Condominium (CC&Rs) Section 6.7. Per Petitioner "...The HOA is required to have a Professional Management Company to maintain the HOA Common Areas.." Petitioner alleges "... Colby Management Company just maintains the books."

1 4. At the outset of the hearing, the parties all agreed that, as of the date the
2 Petition was filed, Respondent did not have a contract with a professional management
3 company for the management of the Association.

4 5. Mr. Rivandi asserted the Board did not know they were required to have a
5 professional management company hired pursuant to the CC&Rs. Mr. Rivandi indicated
6 that since the Petition had been filed, Respondent had contracted with a professional
7 management company.

8 6. The parties attempted to raise and discuss numerous issues unrelated to
9 the single issue raised in the Petition.

10 CONCLUSIONS OF LAW

11 1. The Department has jurisdiction to hear disputes between a property owner
12 and a condominium unit owners' association. A.R.S. § 32-2199 *et seq.*

13 2. In this proceeding, Petitioner bears the burden of proving by a
14 preponderance of the evidence that Respondent violated A.R.S. § 33-1248 and A.R.S. §
15 33-1258. A.A.C. R2-19-119.

16 3. A preponderance of the evidence is "[e]vidence which is of greater weight or
17 more convincing than the evidence which is offered in opposition to it; that is, evidence which
18 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW
19 DICTIONARY 1182 (6th ed. 1990).

20 4. On or about June 24, 2004, the First Amendment to the Amended and
21 Restated Declaration of Condominium and of Covenants, Conditions and Restrictions for
22 Kivas Uno Condominium was recorded with the Maricopa County Records Office.

23 5. Section 6.7 of the CC&Rs provides, in pertinent part, as follows:

24 **6.7 Professional Management.** Subject to the further limitations
25 contained in this Declaration and the Condominium Act regarding the terms
26 of a professional management contract, the Board shall at all times retain
and maintain a "**Managing Agent**," who is duly licensed by the State of
Arizona as a property manager.

27 6. Respondent acknowledged that it did not retain and maintain a Managing
28 Agent at the time the Petition was filed.

29 7. The failure to retain and maintain a Managing Agent was a violation of
30

Section 6.7 of the CC&Rs.

8. Based on the facts presented, the Administrative Law Judge finds no civil penalty is appropriate in this matter.

ORDER

IT IS ORDERED that Petitioner's petition is affirmed.

IT IS FURTHER ORDERED that Respondent reimburse Petitioner its \$500.00 filing fee for the issue on which they prevailed.

IT IS FURTHER ORDERED Respondent is directed to comply with the requirements of Section 6.7 of the CC&Rs going forward.

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, September 6, 2022.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile September 6, 2022 to:

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