IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Megan E Gardner Petitioner v Woodland Valley Ranch Property Owners Association, Inc. Respondent	**No. 23F-H061-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: October 2, 2023

APPEARANCES: Petitioner Megan E. Gardner appeared on her own behalf via Google Meet. Respondent Woodland Valley Ranch Property Owners Association, Inc. was represented by Kyle A. von Johnson, Esq. and Edith I. Rudder.

ADMINISTRATIVE LAW JUDGE: Adam D. Stone

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

2. On or about May 9, 2023, Petitioner filed a single-issue petition against the Association with the Department. Petitioner tendered $500.00 to the Department with his petition.

3. On or about June 2, 2023, the Woodland Valley Ranch Property Owners Association, Inc. ("Association") filed its ANSWER with the Department whereby it denied all complaint items in the petition.

4. Per the NOTICE OF HEARING, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing on July 3 2023, regarding the following issue based on Petitioner's petition:

> Petitioner alleged the Respondent, 'increased dues for members effective 1/1/2023 and did not follow provisions of the CC&Rs, Article 3, Section G, that requires a vote 30 days or more prior to 12/31/2023.'

THE PARTIES AND GOVERNING DOCUMENTS

5. Respondent is a homeowners' association whose members own properties in a residential real estate development located in St. Johns, Arizona.

6. Petitioner was a property owner of Parcel 222 and a member of the Association.

7. The Association is governed by its Covenants, Conditions, and Restrictions ("CCRs"), and overseen by a Board of Directors ("the Board"). The Association is also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("ARIZ. REV. STAT.")

HEARING EVIDENCE

8. Petitioner testified on her own behalf. Respondent called Ronald Cotter as a witness and submitted seven exhibits into evidence. The Agency Record from the Department and NOTICE OF HEARING were also admitted into the evidentiary record.

Petitioner's testimony

9. Petitioner testified generally that there was proper notice not given of an increase in the annual dues from $200.00 to $240.00 for the 2023 calendar year, as required by the Article 3 Section G of the CCRs.

10. Petitioner testified further that while she understood that the Association was facing a crisis due to the embezzlement and the impending invoice due from the road contractor, the Board was still obligated the CCRs.

11. In addition, Petitioner testified that because there had been no notice of the increase or refund and the fact the portal still displayed $240.00 for the annual

assessment, she was concerned as to what the actual dues would be for the 2024 calendar year.

12. Finally, Petitioner testified that the Association refunded the extra $40.00 and that she was not seeking a refund of her filing fee, nor a civil penalty in this case should she prevail in this action.

Ronald Cotter's testimony

13. Mr. Cotter was the Treasurer for the Board of Directors since 2022. He testified that in November 11, 2022, it was discovered that the Association's Property Manager, TRT, had embezzled over $500,000.00 of the Associations funds. Mr. Cotter also testified that while this crime was reported and they were working with TRT's insurance company, there was no idea of a timeline as to when the money and how much, would be recovered.

14. Further, Mr. Cotter also testified that at that time the Association was facing a $110,000.00 invoice from its road contractor who prepared the road for the summer and winter weather conditions.

15. Mr. Cotter testified that based upon these concerns and the best information available at the time, the Board had no choice to raise the dues, thus the Board voted on December 16, 2022 to increase the rates $40.00 per parcel, for the 2023 calendar year. Mr. Cotter testified further that it had "slipped" their minds that they had to provide the notice by December 1, 2023 to comply with the CCR's. Mr. Cotter added that had the Board waited to after January 1, 2023, the rates would not take effect until the 2024 calendar year.

16. Also, Mr. Cotter testified that in April 2023, the Association received $387,000.00 from TRT's insurance company and was able to pay the road contractor invoice, therefore it was decided to issue a $40.00 credit back to the parcel owners. Mr. Cotter added that the dues, at least as of the date of the hearing, remain at $200.00 for the 2024 calendar year.

17. As to the portal issue, Mr. Cotter testified that he had informed the new property management company of the issue, but they stated the could not change the display at this time.

18. Finally, as to the notice of the refund and/or future dues, Mr. Cotter testified that they posted the information to the Association's Facebook page, but they had not sent out a formal notice as this action was pending.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et al., 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(D), 32-2199.02, and 41-1092, OAH has the authority to hear and decide the contested case at bar.

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1804(D).[1]

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[2] 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."[3]

5. Article 3 Section G of the CCR's provide, in relevant part, as follows:

> …The Association shall fix the amount of the regular assessment at least thirty (30) days prior to the end of the calendar year. Written notice of the assessment shall be sent to every Owner. The payment due date shall be established by the Association.[4]

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[1] *See* ARIZ. ADMIN. CODE R2-19-119.
[2] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[3] BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).
[4] *See* Respondent's Exhibit 1.

6. The tribunal finds that Petitioner has met her burden. First, while the tribunal sympathizes with the untenable and horrible position that the Association was facing, it still failed to comply with the CCR's, by not providing the 30 day notice prior to the 2023 yearly Assessment. Fortunately for the Association and the homeowners, it received a relatively quick settlement and was able to meet its bills, and was able to issue a refund of $40.00 to its members.

ORDER

IT IS ORDERED that Petitioner's petition in this matter be affirmed.

IT IS FURTHER ORDERED pursuant to ARIZ. REV. STAT. § 32-2199.02(A), Respondent shall reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. § 32-2199.01.[5]

IT IS FURTHER ORDERED that no civil penalty be awarded as Petitioner did not request the same in her Petition.

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, October 16, 2023.

/s/ Adam D. Stone
Administrative Law Judge

[5] At hearing, Petitioner testified that she did not wish to recovery her filing fee, the tribunal is bound by the statute to order the same.

Transmitted by either mail, e-mail, or facsimile October 16, 2023 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007
Attn:
SNicolson@azre.gov
AHansen@azre.gov
vnunez@azre.gov
djones@azre.gov
labril@azre.gov

Megan E Gardner
tgmg624@yahoo.com

Edith I. Rudder, Esq.
Kyle von Johnson, Esq.
eadie.rudder@carpenterhazlewood.com
Kyle.vonJohnson@carpenterhazlewood.com

By: OAH Staff