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The Lakewood Community Association

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Thomas P. Hommrich appeared on his own behalf. Quinten Cupps, Esq., represented The Lakewood Community Association.

ADMINISTRATIVE LAW JUDGE: Brian Del Vecchio

BACKGROUND AND PROCEDURE

2. On or about July 25, 2023, Petitioner filed a single issue petition with the Arizona Department of Real Estate (Department) which alleged that The Lakewood Community Association's (Association) adoption of the Lakewood Community Association Residential Parking Policy (Parking Policy) violated Section 2.1 of the Declaration of Covenants, Conditions, Restrictions, and Easements (CC&Rs).

4. On or about August 29, 2023, the Department referred this matter to the Office of Administrative Hearings (OAH), an independent state agency, for an evidentiary hearing to address the issue as set forth above.

5. On September 22, 2023, Petitioner submitted a Request for Partial Summary Judgement.

1 6. On September 25, 2023, Petitioner submitted another Request for Partial
2 Summary Judgement.

3 7. On October 12, 2023, Petitioner's Requests for Partial Summary
4 Judgement were denied.

5 **THE PARTIES AND GOVERNING DOCUMENTS**

6 8. Respondent is a homeowners' association whose members own properties
7 in The Lakewood Community Association, a residential real estate development located
8 in Phoenix, Arizona.

9 9. Petitioner is a Lakewood Community property owner and a member of the
10 Association.

11 10. Section 2.1 of the CC&Rs in pertinent part states, "property within
12 Lakewood which is not part of a Lot or Parcel and which is owned by or dedicated to the
13 public or governmental entity shall not be subject to this Declaration although restrictions
14 imposed in this Declaration upon the Owners and Residents concerning the use and
15 maintenance of such property shall be applicable at all times."

16 11. In April of 2007, Respondent adopted the Residential Parking Policy
17 (Parking Policy) which clarified existing use restrictions on property owned by the
18 government. The stated intent of the Parking Policy was to further clarify Section 4.2(t)
19 eliminating overnight parking, limit parking any vehicle on any residential use areas, and
20 reiterated street parking was prohibited.

21 12. On February 2, 2023, a vehicle belonging to Petitioner or Petitioner's family,
22 was observed parked on the street in violation of the CC&Rs. As a result, Respondent
23 caused a Courtesy Violation Notice to be sent to Petitioner that advised him of the
24 violation and provided him 14 days to correct the violation.

25 13. On February 15, 2023, Petitioner responded to the Violation Notice with a
26 letter disputing the violation and attempting to argue that Respondent was not authorized
27 to enforce Section 4.2(t) of the CC&Rs.

28 14. On March 2, 2023, Counsel for Respondent sent a letter to Petitioner
29 responding to his allegations and assertions and restating the Association's authority to
30 enforce Section 4.2(t) of the CC&Rs.

15. Petitioner testified on his own behalf. Sandra Smith testified on behalf of Respondent. Administrative notice was taken was the Department's electronic file and NOTICE OF HEARING.

ARGUMENTS

Petitioner's argument

16. Petitioner argued Respondent did not have authority to eliminate on-street parking because the Parking Policy, as written, supplanted the CC&Rs in a manner which does not comport with Section 4.2(t) of the CC&Rs. Petitioner argued the Parking Policy operated not as a clarification tool, rather, it attempted to amend the CC&Rs without following the appropriate process. Petitioner argued the operative phrase in the Parking Policy which empowered Respondent to effect the CC&Rs was "Rules and Regulations". Petitioner admitted Section 5.3 of the CC&Rs allowed Respondent, by majority vote of the Board of Directors, to adopt, amend, and repeal reasonable rules and regulations; Petitioner admitted "restrictions" are acceptable forms of modifications to the CC&Rs, however, the term "regulations" was not used in Section 4.2 of the CC&Rs; the term used was restrictions. Therefore, without going through the process of amending the CC&Rs, the Parking Policy was invalid.

Respondent's argument

17. Respondent asserted Sections 2.1, 5.3, and 12.2 of the CC&Rs granted Respondent the authority to clarify the existing parking rules found in Section 4.2(t). Section 2.1 of the CC&Rs was the foundational section of the CC&Rs which bound all homeowners to the specific provisions within the CC&Rs. The Parking Policy did not contravene or replace any portion of the CC&Rs; it further clarified Section 4.2(t). A plain language reading of Section 4.2(t) and Section 2.1 permitted Respondent to restrict on-street parking, so long as the appropriate protocol and vote occurred. It was undisputed a majority of the Board voted to pass the Parking Policy.

18. Ultimately, Respondent requested that the Tribunal deny Petitioner's appeal.

CONCLUSIONS OF LAW

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

7 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
8 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and decide the contested
9 case at bar. OAH has the authority to interpret the contract between the parties.¹

10 3. In this proceeding, Petitioner bears the burden of proving by a
11 preponderance of the evidence that Respondent violated Section 2.1 of the CC&Rs.²

12 4. “A preponderance of the evidence is such proof as convinces the trier of fact
13 that the contention is more probably true than not.”³

14 5. A preponderance of the evidence is “[t]he greater weight of the evidence, not
15 necessarily established by the greater number of witnesses testifying to a fact but by
16 evidence that has the most convincing force; superior evidentiary weight that, though not
17 sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair
18 and impartial mind to one side of the issue rather than the other.”⁴

19 6. Petitioner’s assertion that the semantic difference between the terms “rules
20 and regulations” and “rules and restrictions” is irrelevant in determining whether
21 Respondent had the authority under Section 2.1 of the CC&Rs to clarify Section 4.2(t).
22 Petitioner admitted under Section 5.3 Respondent had the authority, by majority vote of
23 the Board, to adopt, amend, and repeal reasonable rules and regulations. The Parking
24 Policy explicitly stated it was enforcing “Rules and Regulations.” Section 2.1 of the
25 CC&Rs was the general declaration which granted authority to Respondent to establish
26 the provisions in which homeowner’s would be bound. It was undisputed Respondent
27 passed the Parking Policy by majority vote in compliance with Section 5.3. A plain

28 ¹ See *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ² See ARIZ. ADMIN. CODE R2-19-119.

30 ³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 language reading of Section 4.2(t) granted Respondent authority, among other things, to
2 prevent on-street parking. The Parking Policy did not subvert Section 4.2(t) nor did it
3 contradict said policy, rather it further clarified prohibited on-street parking. Petitioner
4 failed to meet his burden because insufficient evidence was presented to establish
5 Respondent did not have authority to pass the Parking Policy.

6 7. Accordingly, Petitioner failed to establish that Respondent acted in violation
7 of the Association's governing documents.

8 8. The undersigned Administrative Law Judge concludes that, because
9 Petitioner failed to meet his burden of proof that Respondent committed the alleged
10 violation, his petition must be dismissed.

11 **ORDER**

12 Based on the foregoing,

13 **IT IS ORDERED** that Petitioner's petition be dismissed.

14 **NOTICE**

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

20 Done this day, November 9, 2023.

21 /s/ Brian Del Vecchio
22 Administrative Law Judge

23 Transmitted by either mail, e-mail, or facsimile November 9, 2023 to:

24 Susan Nicolson
25 Commissioner
26 Arizona Department of Real Estate
27 100 N. 15th Avenue, Suite 201
28 Phoenix, Arizona 85007
29 Attn:
30 SNicolson@azre.gov

1 AHansen@azre.gov

2 vnunez@azre.gov

3 djones@azre.gov

4 labril@azre.gov

5 Thomas P. Hommrich

6 thommric@yahoo.com

7 Quinten Cupps, Esq.

8 Vlal Fotheringham, LLP

9 qcupps@vf-law.com

10 By: OAH Staff