

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Sebastien Verstraet

No. 23F-H066-REL

4 Petitioner

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 v

6
7 Monterey Ridge Condominium Association

8 Respondent

9
10 **HEARING:** October 26, 2023

11 **APPEARANCES:** Petitioner Sebastien Verstraet appeared on his own behalf.
12 Respondent Monterey Ridge Condominium Association was represented by Josh Bolen
13 Esq. and Marcus R. Martinez, Esq.

14 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

15
16 After review of the hearing record in this matter, the undersigned Administrative
17 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
18 ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

19 **FINDINGS OF FACT**

20 **BACKGROUND AND PROCEDURE**

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

24 2. On or about May 23, 2023, Petitioner filed a single-issue petition against the
25 Association with the Department. Petitioner tendered \$500.00 to the Department with his
26 petition.

27 3. On or about June 22, 2023, the Monterey Ridge Condominium Association
28 ("Association") filed its ANSWER with the Department whereby it denied all complaint items
29 in the petition.

1 4. Per the NOTICE OF HEARING, the Department referred this matter to the
2 Office of Administrative Hearings ("OAH"), an independent state agency, for an
3 evidentiary hearing on August 22, 2023, regarding the following issue based on
4 Petitioner's petition:

5 [Respondent] is stating that I am in violation of section 4.24 "Flooring
6 Restriction for New Units" on pages 1-2 of the CC&Rs Sixth Amendment
7 due to the noise disturbance it may cause; however the flooring that I
8 installed is LVP, which has a sound rating measured by International
9 standard similar to the required carpet flooring.

10 **THE PARTIES AND GOVERNING DOCUMENTS**

11 5. Respondent is a homeowners' association whose members own properties
12 in a condominium located in Scottsdale, Arizona.

13 6. Petitioner is a property owner and a member of the Association.

14 7. The Association is governed by its Amended and Restated Condominium
15 Declaration ("Declaration"), and overseen by a Board of Directors ("the Board"). The
16 Association is also regulated by Title 33, Chapter 9 of the Arizona Revised Statutes
17 ("ARIZ. REV. STAT.")

18 **HEARING EVIDENCE**

19 8. Petitioner testified on his own behalf and called Ron Riecks as a witness.
20 Respondent called Robert Stein as a witness and submitted four exhibits into evidence.
21 The Agency Record from the Department and NOTICE OF HEARING were also admitted into
22 the evidentiary record.

23 Petitioner's testimony

24 9. Petitioner testified that in January 2023 he closed on Unit 3055 in the
25 Monterey Ridge Condominiums. Petitioner testified that he was given the Declaration and
26 community documents approximately one week before closing, however did not fully read
27 the same.

28 10. Further, Petitioner testified that he wanted to install Luxury Vinyl Plank
29 (LVP) flooring where there was existing carpeting, and proceeded to do the same without
30 first notifying the Association. Petitioner testified that he believed the LVP flooring would
enhance not only the look of his unit, but the increase potential resale value as well.

Ron Riecks' testimony

11. Mr. Reicks was the installer of the LVP flooring for Petitioner, and was curious as to why the flooring was not allowed, as there was already LVP in the kitchen, bathroom and laundry room. Mr. Riecks testified that the soundproof rating was 63, and that most condominiums require a threshold of 50.

Robert Stein's testimony

12. Mr. Stein was the Community Manager for City Property Management who managed the property. He testified that in December 15, 2015, section 4.24 was amended to read the following:

4.24 Flooring Restriction for New Units. Except for entry areas where hard floor coverings have been installed by Declarant, and except for kitchen, bathroom and laundry areas, hard floor coverings (e.g., ceramic tile, natural stone, vinyl, hardwood or laminated flooring) shall be prohibited in all other areas of the following Units: second floor Units 2019, 2037, 2046, 2055, 2064, 2073, 2082, 2091, 2118, 2127, 2136, 2145, 2154, 2163, 2172, 2181; and all third floor Units. Carpet and pad shall be required in all such areas to mitigate the noise disturbance to first and second-floor Units. The Rules shall include an illustration of the only areas where hard floor coverings are permitted in the foregoing Units.¹

13. Further, Mr. Stein testified that the Association Rules as of 2015, state the following:

Floor Coverings. As set forth in Section 4.24 of the Declaration, hard floor coverings have been prohibited in designated areas or certain "New Units," as such term is defined in the Declaration, to mitigate noise disturbance to first and second- floor Units. The areas of those New Units in which hard floor coverings will be permitted are illustrated on Exhibit 1 attached hereto.²

14. Mr. Stein testified that he had gone up to Petitioner's residence and noticed that the LVP flooring was being installed and informed him that he was not permitted to install the same. This led to a letter on or about February 28, 2023, wherein Petitioner was informed that he may be fined for violation for the Declaration and Rules.³

¹ See Exhibit 1 at MONTRDG00067-68

² See Exhibit 2 at MONTRDG00076.

³ See Exhibit 4.

15. Next Mr. Stein testified that Petitioner requested a hearing before the Board, but the Board upheld the violation.

16. Finally, Mr. Stein testified that the property management company sends all community documents to the buyer prior to closing so that the buyer may review the same.

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 the Declarations and Association Rules.⁴

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁵ 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."⁶

5. The tribunal finds that Petitioner has not met his burden. Petitioner admitted in his testimony that he timely received a copy of the Declaration and Rules approximately a week prior to closing. Petitioner also admitted that he did not fully read the same.

⁴ See ARIZ. ADMIN. CODE R2-19-119.

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

⁶ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 Finally, Petitioner admitted that he did not seek permission from the Association to install
2 the LVP flooring, which had he done, he probably would have been informed that the
3 Rules did not allow for the same. While Petitioner probably had valid points about the look
4 and potential value of LVP flooring versus carpeting, unfortunately, the Declarations and
5 Rules are clear and unambiguous, that but for the kitchen, laundry room and bathroom,
6 any flooring installed in third floor units, besides carpeting was prohibited.

7 **ORDER**

8 **IT IS ORDERED** that Petitioner's petition in this matter be denied.

9 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
10 Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. §
11 32-2199.01.

12 **NOTICE**

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

18 Done this day, November 13, 2023.

19 /s/ Adam D. Stone
20 Administrative Law Judge
21

22 Transmitted by either mail, e-mail, or facsimile November 13, 2023 to:

23 Susan Nicolson
24 Commissioner
25 Arizona Department of Real Estate
26 100 N. 15th Avenue, Suite 201
27 Phoenix, Arizona 85007
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