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No. 24F-H011-REL

ADMINISTRATIVE LAW JUDGE DECISION

V.

Respondent.

APPEARANCES: Petitioner Samuel Paparazzo appeared on his own behalf. Ashley Turner, Esq. represented Respondent Coronado Ranch Community Association. Kim Jackson appeared as a witness.

FINDINGS OF FACT

2. On or about October 12, 2023, the Department issued a Notice of Hearing in which it set forth the issue for hearing as follows:

3. At hearing, Petitioner testified on his own behalf. Respondent presented the testimony of Kim Jackson, Treasurer.

1 4. Petitioner asserted at hearing that Respondent was in violation of A.R.S. §
2 33-1804(A) because its Board canceled its existing community management contract and
3 entered into a contract with a new community management company without allowing
4 open discussion and member comment, and then motioning and voting on the change.
5 Petitioner asserted that issue regarding requests for bids for a new community
6 management company was never placed on the monthly Board meeting agendas, and
7 there was no formal discussion, motion, or vote regarding bids. Petitioner testified that the
8 issue regarding contracting with a new community management company appeared on
9 five (5) monthly Board meeting agendas, however, the Board did not allow for formal
10 discussion, motion, and a vote before deciding on the change. Petitioner alleged that the
11 Board violated the open meeting statute by the afore-described actions.

12 5. On August 10, 2023, Respondent contracted with Heywood Realty &
13 Investment, Inc. ("Heywood") for community management.¹

14 6. The Board meeting minutes from November 2022, through March 2023, all
15 list the community management contract as either "new business" or unfinished
16 business."²

17 7. Petitioner testified that he attended every Board meeting either in person or
18 virtually, and there was no discussion prior to the March 2023 meeting regarding obtaining
19 proposals for a new community management company or entering into a contract with
20 Heywood. Therefore, Petitioner assumed that discussion occurred outside of the open
21 meetings.

22 8. Kim Jackson, Board Treasurer, testified that at the November 2022 Board
23 meeting, under the subject of "New Business," "Community Management RFP Update"
24 was listed. Ms. Jackson testified that she brought up her concerns and problems with the
25 previous community management company. Ms. Jackson expressed her frustrations with
26 the owner of the previous community management company, who was Respondent's
27 previous community manager. The son of the owner of this company was subsequently
28 assigned as the new community manager for Respondent. Ms. Jackson had engaged in

29 ¹ See Petitioner's Exhibit A.

30 ² See Petitioner's Exhibit 3, 4-8.

1 productive discussions with the new community manager, and it was decided that
2 Respondent would take a “wait and see approach.”

3 9. Ms. Jackson testified that in the summer of 2022, as Treasurer, she noticed
4 issues with Respondent's bookkeeping, in that Respondent's insurance was “double
5 paid” by the previous community management company, and she discovered the
6 \$23,000.00 error. Ms. Jackson credibly testified that she and the rest of the Board did not
7 meet to discuss the issues, but rather, she put the matter on the November 2022 meeting
8 agenda, and expressed during that meeting that she had “caught financial errors” by the
9 previous community management company, and that it was becoming a “heavy burden”
10 for her. Because of this, the November 2022 meeting was scheduled to be held at a local
11 school to bring the conversation to the community. Ms. Jackson testified that she posted
12 the meeting information to two Facebook groups to which the community had access.³
13 The goal was to get as many members of the community as possible to attend the
14 meeting. Ms. Jackson testified that the decision to terminate the existing contract and
15 enter into a new one was “stressful” and the Board wanted to include the community in the
16 decision making process. An email was also sent to the members of the community on
17 October 31, 2022, informing them of the meeting details, which is how Petitioner was aware
18 of the meeting.

19 10. Regarding the RFPs, Ms. Jackson explained that the members of the Board
20 “went out for bids on their own” as they often obtain RFPs for various needs of the
21 community. Ms. Jackson credibly testified that there was a thirty (30) minute discussion
22 regarding the RFPs that were obtained by various Board members, as well as discussion
23 pertaining to providing the previous community management company an opportunity to
24 improve.

25 11. Ms. Jackson credibly testified that all three bids were brought to this meeting
26 and have been available for the community to view at every meeting from then through the
27 August 2023 meeting, and that she even invited the members of the community to her
28 home to view the documents if they wished.

29 ³ See Respondent's Exhibit G.

12. Ms. Jackson credibly testified that no decisions were made regarding the contract until the August 2023 meeting.

13. Ms. Jackson credibly testified that Petitioner was present virtually for the August 2023 meeting and that a “lengthy” discussion ensued regarding the contract change after she made a motion for such. Ms. Jackson testified that because Petitioner was present virtually, he typed his comments, and then was given the opportunity to speak for ten (10) minutes at that meeting. After Petitioner spoke for ten (10) minutes, the community manager stepped in to give other homeowners an opportunity to speak. However, Ms. Jackson requested permission to address Petitioner’s questions and concerns, and reiterated the issues that had been experienced with the previous community management company. Ms. Jackson credibly testified that *after* homeowner comments, the Board voted unanimously to terminate the previous community management company’s contract, and to contract with Heywood. A notice of termination to the previous community management company was handed out at the August 2023 meeting and read aloud at the meeting for those appearing virtually.⁴

14. The August 2023 meeting minutes do not reflect this discussion and decision because the secretary inadvertently left the information off of those minutes.

CONCLUSIONS OF LAW

1. Arizona statute permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents or violations of statutes that regulate planned communities.⁵ That statute provides that such petitions will be heard before the Office of Administrative Hearings.

2. Petitioner bears the burden of proof to establish that Respondent committed the alleged violation by a preponderance of the evidence.⁶ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁷

⁴ See Respondent’s Exhibit L.

⁵ A.R.S. § 32-2199.

⁶ See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁷ See A.A.C. R2-19-119(B)(2).

1 3. “A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not.”⁸ A preponderance of the evidence is
3 “[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
7 the other.”⁹

8 4. A.R.S. § 33-1804(A) sets forth the following:

9 Notwithstanding any provision in the declaration, bylaws or other
10 documents to the contrary, all meetings of the members' association and
11 the board of directors, and any regularly scheduled committee meetings,
12 are open to all members of the association or any person designated by a
13 member in writing as the member's representative and all members or
14 designated representatives so desiring shall be permitted to attend and
15 speak at an appropriate time during the deliberations and proceedings. The
16 board may place reasonable time restrictions on those persons speaking
17 during the meeting but shall permit a member or member's designated
representative to speak once after the board has discussed a specific
agenda item but before the board takes formal action on that item in addition
to any other opportunities to speak. The board shall provide for a
reasonable number of persons to speak on each side of an issue.

18 5. Petitioner failed to prove by a preponderance of the evidence that
19 Respondent violated A.R.S. § 33-1804(A) as alleged in the Petition. The credible
20 evidence of record established that the meetings held by Respondent's Board were open
21 to the public, that the issue regarding the termination of the previous contract, RFPs, and
22 entering into the new contract were discussed at the November 2022 meeting, and voted
23 on at the August 2023 meeting, *after* a motion and member comment, during which time
24 Petitioner provided comment for ten (10) minutes. Thus, Petitioner failed to sustain his
25 burden to establish a violation of A.R.S. § 33-1804(A).

26 **ORDER**

27 IT IS ORDERED that Petitioner's Petition is dismissed.

28
29 ⁸ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ⁹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

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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, November 22, 2023.

/s/ Sondra J. Vanella
Administrative Law Judge

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

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