

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of

No. 24F-H003-REL

VVE-Casa Grande Home Owners
Association,
Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

vs.

Duane Eitel & Mary Eitel,
Respondents.

HEARING: November 14, 2023 at 1:00 PM.¹

APPEARANCES: Anthony Rossetti, Esq. appeared on behalf of VVE-Casa Grande Home Owners Association ("Petitioner" and "the Association") with Douglas Karolak as a witness. Kevin Harper, Esq. appeared on behalf of Duan Eitel ("Respondent DE") and Mary Eitel (jointly as "Respondents"), with Respondent DE as a witness.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, and attached agency file, was admitted into the record, along with Petitioner Exhibits 1-20, and Respondents Exhibits 1-16.

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 Pursuant to the request of the parties, the hearing record in the above-captioned matter was closed on November 14, 2023, whereby the matter was scheduled for a STATUS UPDATE on December 14, 2023, and extended to February 02, 2024, to afford the parties an opportunity to resolve their underlying dispute(s). On February 02, 2024, the parties requested that an administrative decision be issued, as they were unable to settle.

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

4 2. On or about July 05, 2023, Petitioner filed a 2-issue petition with the
5 Department which alleged that Respondents violated Covenants, Conditions, and
6 Restrictions ("CC&Rs"), Article VII sections 7.2, 7.3, 7.25, 7.26, 7.28, 7.29, and 7.31 by
7 "operating an unauthorized business out of their home."² Specifically, Petitioner alleged
8 that Respondents run a nonprofit business whereby they house cats in their garage, far in
9 excess of a "reasonable number of household pets" permitted by the CC&Rs. Petitioner
10 requested an ORDER from the Department that required Respondents to abide by the
11 aforementioned sections of the CC&Rs.³

12 a. On an unknown date, Petitioner tendered \$1,000.00 to the Department as a
13 filing fee for the petition at issue.

14 3. On July 27, 2023, the Department issued an HOA NOTICE OF PETITION to the
15 Association.⁴

16 4. On or about August 14, 2023, Respondents returned its ANSWER to the
17 Department whereby it denied all complaint items in the petition.⁵

18 5. Per the NOTICE OF HEARING, the Department referred this matter to the
19 Office of Administrative Hearings ("OAH"), an independent state agency, for an
20 evidentiary hearing on October 18, 2023,⁶ regarding the following issue:

21 **Whether Respondents are in violation of CC&Rs sections 7.2, 7.3, and**
22 **7.25 "by operating an unauthorized business out of their home**
23 **creating a nuisance for other residents in the community."**

24 **Whether Respondents are in violation of CC&Rs sections 7.25, 7.26,**
25 **7.28, 7.29, and 7.31 by allowing "dozens of cats [to be] housed in the**
26 **garage, fair in excess of a reasonable number of household pets ..."**⁷

27 ² See Department's electronic file at #50 Eitel Final Petition.pdf.

28 ³ *Id.*

29 ⁴ See Department's electronic file at Notice of Petition.pdf.

30 ⁵ See Department's electronic file at 20230814 Response to ADRE Petition – EITEL (2).pdf; see also
Department's electronic file at 20230814 Supplement to Response.pdf.

⁶ At the request of Petitioner, the matter was continued and reset for hearing on November 14, 2023.

⁷ See Department's electronic file at Notice of Hearing.pdf.

THE PARTIES AND GOVERNING DOCUMENTS

6. Petitioner is a nonprofit homeowners' association whose members own properties in a residential real estate development located in Casa Grande, Arizona.⁸ Membership for the Association is comprised of homeowners within the Val Vista Estates subdivision in Casa Grande, Arizona.

7. Respondents are Val Vista Estates subdivision property owners and members of the Association.⁹

8. The Association is governed by its CC&Rs and overseen by a Board of Directors ("the Board"). The CC&Rs empower the Association to control certain aspects of property use within the development. When a party buys a residential unit in the development, the party receives a copy of the CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract between the Association and each property owner.

9. On December 03, 1997, the Association's CC&Rs were recorded with the Pinal County Recorder's Office.¹⁰

10. On June 19, 2020, the VVE-Casa Grande Home Owners Association Rules Concerning Use Restrictions were adopted by the Association via recording with the Pinal County Recorder's Office.¹¹

11. The Association's CC&Rs provide, in Part 7 – USE RESTRICTIONS, as follows in pertinent parts:

7.2 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. Each Dwelling Unit constructed on the Real Property may be occupied only by a Single Family.

7.3 No Commercial Use. No part of a Lot shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for commercial manufacturing, storing, vending purposes. Nothing herein shall be deemed to prevent the Owner thereof, subject to all of the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Rules from maintaining a home office. Any Owner who leases his Residence shall promptly notify the

⁸ See Department's electronic file at Arizona Corporations Commission.pdf.

⁹ See Department's electronic files at Respondents Parcel Details.pdf, Respondents 2022 Tax Summary.pdf, and Respondents Warranty Deed.pdf.

¹⁰ See Petitioner Exhibit 1.

¹¹ See Petitioner Exhibit 2.

Association and shall advise the Association of the term of the lease and the name of each tenant.

* * *

7.25 Animals. Animals allowed are a reasonable number of generally recognized household pets. Pets are not allowed to run freely outside its Owner's property without a leash, or so as to create a nuisance. State and county laws govern numbers of, noise and nuisance created by pets and will remain the authority in this case.

7.26 Garbage, Trash, Debris and Hazardous Materials. No rubbish, hazardous materials, or debris of any kind shall be placed, stored, or permitted to accumulate upon or adjacent to any Lot or other portion of the Project and no odors shall be permitted to arise there from, so as to render any such Lot or any portion, of the Project unsanitary, unsightly, offensive or detrimental to any other such Lot or any portion of the Project or to its occupants. No garbage or trash shall be placed or kept on any Lot or any other portion of the Project except in covered containers of a type, size and style which are approved by the Architectural Committee.

* * *

7.29 Diseases and Insects. No Owner shall permit anything or condition to exist upon any property which shall induce, breed or harbor infections, plant diseases or noxious insects.

* * *

7.31 Safe and Orderly Condition. Without limiting any other provision of this Part, each Owner shall maintain and keep his Lot at all times in a safe, sound, orderly and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots.

12. On or about February 13, 2018, the Board voted CC&Rs 3.4 Association Rules¹² to read as follows:

The Board shall be empowered to adopt, amend, or repeal such and regulations as it deems reasonable and appropriate (the Association Rules) binding upon all Persons subject to this Declaration.

HEARING EVIDENCE

13. Douglas Karolak testified on behalf of Petitioner. Respondent DE testified on behalf of Respondents. The substantive evidence of record is as follows:

- a. Valley Kitten Nursery & Rescue Inc. ("VKNR") is a nonprofit incorporated on or about May 30, 2017.¹³ Mary Eitel is the Chief Executive Officer and

¹² See Petitioner Exhibit 3.

¹³ See Petitioner Exhibits 4-7.

1 Director for the business, whose address of record is 1377 E. Florence
2 Blvd., Ste. 151-M-12, Casa Grande, Arizona 85122.¹⁴ VKNR charges
3 \$125.00 adoption fees for kittens, and \$95.00 adoptions fees for adult
4 cats.¹⁵

- 5 b. Respondents reside at 12768 Acacia Ln. Casa Grande, Arizona 85194.
6 Respondent store kittens and cats in their 3-car garage pending adoption.¹⁶
7 Historically, adoptions have been conducted at local pet store, but on
8 occasion adopters have been permitted to meet their potential pets at
9 Respondents' residence. Respondents' home is zoned as CR-1A for single
10 residence by Pinal County.¹⁷ As such, an animal rescue and/or animal
11 shelters an unauthorized use of the property, and subject to a zoning
12 violation.
- 13 c. On December 20, 2017, Respondents' residence was inspected by Pinal
14 County and determined to be in violation because over fifty (50) cats were
15 being stored in Respondents' 3-car garage as a "Cat Rescue."¹⁸
- 16 d. Pinal County gave Respondents one (1) month to come into compliance by
17 removing the cats from their residence.¹⁹
- 18 e. By January 22, 2018, fifty-nine (59) cats were removed from the property.²⁰
- 19 f. On January 31, 2019, the Association's management company, Norris
20 Management ("Norris") issued a formal inquiry to Respondents to inquire
21 about the status of the dissolution of their business, as it had received a
22 number of complaints about cats still being held on their property and high
23 traffic at their residence.²¹

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26 ¹⁴ See Petitioner Exhibit 6.

27 ¹⁵ See Petitioner Exhibit 7.

28 ¹⁶ See Petitioner Exhibit 10.

29 ¹⁷ See Petitioner Exhibit 9.

30 ¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Respondents Exhibit 2.

- 1 g. On April 08, 2019, Norris issued a WARNING LETTER to Respondents
2 regarding alleged violations of the CC&Rs.²² In a response dated April 11,
3 2019, Respondents denied the alleged CC&Rs violations, and argued that
4 they were not “running a business” because VKNR was a “501 3(C) non-
5 profit” cat rescue.²³ Respondents opined that its volunteers, present from
6 morning to afternoon to care for the cats, did not encumber the
7 neighborhood as they parked in Respondents’ driveway and not on the
8 street.²⁴
- 9 h. On March 15, 2021, Norris issued another formal inquiry to Respondents to
10 inquire about the status of the alleged seizure of their business, as it had
11 received a number of complaints about cats still being held on Respondents’
12 property and high traffic at their residence.²⁵
- 13 i. On May 24, 2022, Norris issued a WARNING LETTER to Respondents
14 regarding alleged violations of the CC&Rs.²⁶ In a response dated June 02,
15 2022, Respondents reiterated their prior denials of wrongdoing and/or
16 alleged violations of any provisions of the CC&Rs.²⁷
- 17 j. On June 29, 2022, the Association withdrew the WARNING LETTER.²⁸
- 18 k. On May 04, 2023, the Association’s newly hired management company,
19 Rossetti Management & Realty Services (“Rossetti”), provided
20 Respondents with notice that the use of their residence as a cat rescue was
21 unauthorized and impermissible, and required Respondents to “wind down”
22 their operations by June 01, 2023.²⁹
- 23 l. In reply on an unknown date, Respondents opined that they were in
24 compliance with the CC&Rs, denied being a nuisance, and argued that the

25 ²² See Respondents Exhibit 3.

26 ²³ See Petitioner Exhibit 10.

27 ²⁴ *Id.*

28 ²⁵ See Respondents Exhibit 5.

29 ²⁶ See Respondents Exhibit 6.

30 ²⁷ See Respondents Exhibit 7.

²⁸ See Respondents Exhibit 8.

²⁹ See Petitioner Exhibit 11.

Association set the June 01, 2023, date.³⁰ Respondents informed Rossetti that they had agreed not to take in any more cats, and were acting in good faith to adopt them out as quickly as possible, but that some cats would still be in their possession June 01, 2023.³¹

- m. On May 26, 2023, the Association issued a FINE ASSESSMENT WARNING LETTER to Respondent that noted a \$100.00 fine would be imposed against Respondents of the alleged CC&Rs violations were not corrected by June 01, 2023.³² Respondents appealed on May 30, 2023.³³ In response, on June 01, 2023, the Association agreed to extend the underlying compliance deadline to June 01, 2023, before implementing a daily \$10.00 fine until Respondents came into compliance.³⁴ On August 04, 2023, Respondents submitted another appeal to the Association.³⁵

ADDITIONAL EVIDENCE

- n. Mr. Karolak is a Val Vista Estates homeowner and member of the Association. Mr. Karolak has observed cats being delivered to Respondents' residence, debris and other materials on Respondents' property visible from the road, and volunteers cleaning items in Respondents' driveway. Per Mr. Karolak, he and a number of residents are concerned regarding potential biohazardous or otherwise noxious materials and disease(s) being washed into the road from Respondents' residence.
- o. Respondent DE testified that in addition to adoptions, VKNR also practices "trap and release" whereby feral cats are captured, spayed or neutered, medically treated when necessary, and then released back into the general vicinity of where they were captured.³⁶

³⁰ *Id.*

³¹ *Id.*

³² See Respondents Exhibit 12.

³³ See Respondents Exhibit 13.

³⁴ See Respondents Exhibit 14.

³⁵ See Respondents Exhibit 15.

³⁶ See Petitioner Exhibit 21.

p. Respondent DE also testified that Respondents would shutter VKNR and cease further operations as soon as their current inventory was gone.

CLOSING ARGUMENTS

14. In closing, Respondents opined that only section 7.3 of the CC&Rs applied to the proceedings, and argued that Petitioner had not sustained its burden of proof.

15. In closing, Petitioner argued that painstaking steps had been taken to ensure Respondents were treated as neighbors, and not adversaries, but that Respondents' continued disregard of the CC&Rs at issue had left no choice but to ask the Department to intervene administratively. Petitioner further argued that Respondents were unequivocally running a business from their home, and that there was no evidence of any of the 50+ cats stored in their garage being a pet. As such, Petitioners asked that the Tribunal issue an order in its favor.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., 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(A), 32-2199.01(D), 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.³⁷

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondents violated one or more provisions of a community document.³⁸

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."³⁹ A preponderance of the evidence is

³⁷ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

³⁸ See ARIZ. ADMIN. CODE R2-19-119.

³⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 “[t]he greater weight of the evidence, not necessarily established by the greater number of
2 witnesses testifying to a fact but by evidence that has the most convincing force; superior
3 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
4 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
5 the other.”⁴⁰

6 5. Based upon a review of the credible and relevant evidence in the record,
7 Petitioner sustained its burden of proof.

8 6. Here, the material facts are clear. It is clear from the record that
9 Respondents are Members of the Association, and as such are bound by their governing
10 documents, including the CC&Rs. It is also clear from the record that Respondents have
11 operated VKNR from their single-family residence, in whole or in part, since at least
12 mid-2017. The record also reflects that in that time Respondents were repeatedly warned
13 that use of their residence as a cat rescue was unauthorized and impermissible, as their
14 business created a traffic and waste nuisance, punishable by fine. It is further clear from
15 the record that Respondents never cured the underlying conduct at issue in this matter.

16 7. Respondents’ vehement assertions that VKNR is not a “business” because
17 it is a nonprofit is both technically and legally inaccurate. Respondents’ concessions that
18 50+ cats were, up to the date of the hearing, kept in their 3-car garage pending private
19 adoption establish a clear business model. Respondent DE admitted that none of these
20 animals are pets. Nothing in the record outweighs or excuses the visible debris as a direct
21 consequence of Respondents’ business, nor does Respondents’ interest rescuing cats
22 trump their neighbors’ rights to the enjoyment of their properties.

23 8. Therefore, the undersigned Administrative Law Judge must conclude that
24 because Petitioner established violations of CC&Rs sections 7.2, 7.3, 7.25, 7.26, 7.28,
25 and 7.31 by a preponderance of the evidence, its petition must be granted,
26 notwithstanding the fact that a violation of CC&Rs 7.29 has not been established.

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⁴⁰ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition is granted.

IT IS FURTHER ORDERED that Respondents henceforth abide by sections 7.2, 7.3, 7.25, 7.26, 7.28, and 7.31 of the Val Vista Estates CC&Rs.

NOTICE

Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04. Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter must be filed in writing with the Commissioner of the Department of Real Estate within thirty (30) days of the service of this ORDER upon the parties.

Done this day, February 22, 2024.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted electronically to:

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