

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 24F-H025-REL

4 David Y. Samuels

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 vs

6
7 The Concorde Condominium Home Owners
8 Association

9 **HEARING:** April 3, 2024

10 **APPEARANCES:** David Y. Samuels appeared on his own behalf. Ashley Turner,
11 Esq. appeared on behalf of The Concorde Condominium Home Owners Association.

12 **ADMINISTRATIVE LAW JUDGE:** Amy M. Haley

13 **EXHIBITS ADMITTED INTO EVIDENCE:** Administrative Notice was taken of the
14 Hearing File and all of its documents contained therein.

15
16 **FINDINGS OF FACT**

17 1. The Concorde Condominium Home Owners Association (Respondent) is
18 an association of condominium owners located in Mesa, Arizona.

19 2. Daso Properties, LLC is the owner of 424 W. Brown Road #102, Mesa,
20 Arizona (Property).

21 3. David Y. Samuels (Petitioner) is the managing member of Daso Properties,
22 LLC.

23 4. The subject Property is a condominium.

24 5. On or about November 1, 2023, Petitioner filed a petition with the Arizona
25 Department of Real Estate (Department), alleging that Respondent had violated the
26 provisions of A.R.S. Title 33, Chapter 16, Section 33-1803. Petitioner specifically alleged,
27 in relevant part, as follows:

28 The HOA (respondent) has charged late fees, collection fees, and
29 attorney fees for delinquent assessment payments yet has not provided
30 documentation that demonstrates these fees were warranted.

6. On or about November 15, 2023, the Department issued a notice to Respondent regarding the petition.

7. On or about December 4, 2023, Respondent filed an answer to the petition denying all allegations.

8. On or about December 14, 2023, the Department issued a Notice of Hearing to the parties notifying them that a hearing on the petition would be conducted by the Office of Administrative Hearings.

9. On or about December 14, 2023, Respondent filed a Motion to Dismiss that was denied at that time. In doing so, it was further determined that the issue(s) would be better addressed after testimony had been taken.

10. On April 3, 2024, a hearing was held on the petition.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to hear disputes between a property owner and a condominium owners association.¹

2. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated A.R.S. § 33-1803 as alleged in his petition.

3. The Tribunal finds that, after taking testimony, Petitioner, as an individual, did not have standing to bring this action. A.R.S. § 32-2199.01(A) states, “For a dispute between **an owner** and a condominium association or planned community association . . . **the owner** or association may petition the department [of real estate] for a hearing concerning . . . violations of the statutes that regulate condominiums.” (Emphasis added). The department does not have jurisdiction to hear a dispute that does not involve an owner or an association. *Id.* The proper party to bring the action would have been Daso Properties, LLC.

4. The Tribunal further finds that the Arizona Revised Statute under which this action was brought was improper. Petitioner brought his cause of action under A.R.S. § 33-1803. However, the Property is a condominium; therefore, Respondent is not subject

¹ A.R.S. § 32-2199 *et seq.*

1 to the Planned Community Act. See A.R.S. § 33-1801(A) ("This chapter applies to all
2 planned communities.") Chapter 9 governs condominiums.

3 5. As such, Petitioner has stated no claim upon which relief can be granted
4 under A.R.S. § 33-1801.

5 **ORDER**

6 **IT IS ORDERED** that Petitioner's petition is dismissed.

7
8 **NOTICE**

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

14 Done this day, April 18, 2024.

15 /s/ Amy M. Haley
16 Administrative Law Judge
17

18 Transmitted by either mail, e-mail, or facsimile April 18, 2024 to:

19 Susan Nicolson
20 Commissioner
21 Arizona Department of Real Estate
22 100 N. 15th Avenue, Suite 201
23 Phoenix, Arizona 85007
24 Attn:
25 SNicolson@azre.gov
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