

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of

No. 24F-H030-REL

4 Michael J. Morris

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 **PETITIONER,**

6 vs.

7 StarPass Master Homeowner Association,
8 Inc.

9 **RESPONDENT.**

10
11 **HEARING:** March 6, 2024 with the record held open until April 3, 2024, for the
12 sole purpose of receiving written closing arguments.

13 **APPEARANCES:** Petitioner Michael J. Morris (Petitioner) appeared on behalf of
14 himself. F. Christopher Ansley appeared on behalf of Respondent StarPass Master
15 Homeowner Association, Inc. (Respondent).

16 **ADMINISTRATIVE LAW JUDGE:** Velve Moses-Thompson

17 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner's Exhibits A through C.
18 Respondent's Exhibits 1 through 15.

19
20 **FINDINGS OF FACT**

21 1. The Arizona Department of Real Estate (Department) is authorized by
22 statute to receive and to decide Petitions for Hearings from members of homeowners'
23 associations and from homeowners' associations in Arizona. Homeowners'
24 associations and their members are governed by the Chapter 16 of Title 33, the
25 Planned Communities Act, Arizona Revised Statutes (A.R.S.) §§ 33-1801 to 33-1818
(the Act).

26 2. Respondent is a homeowners' association whose members own single-
27 family houses or lots in the StarPass development in Tucson, Arizona.

28 3. Petitioner is a member of Respondent.
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30

1 4. F. Christopher Ansley is the current and only President of Respondent's
2 Board of Directors. Mr. Ansley is one of the original developers of StarPass and the
3 Declarant.

4 5. On or about November 17, 2023, Petitioner filed and paid for a single-
5 issue petition with the Arizona Department of Real Estate (Department) alleging that
6 Respondent violated A.R.S. §§ 33-1804, 1810, and 1817; Respondent's Bylaws Article
7 3, Section 1; Respondent's Covenants, Codes, and Restrictions (CC&R)s Article III,
8 Sec. 2(b), Article III, Sec. 5, and Article XI, Section 8(b). The petition provided, in
9 relevant part, as follows:

10 The Board of Directors for the Starr Pass Master HOA (BOD)
11 **has for years been operating autonomously as an**
12 **appointed BOD with the Declarant serving as the current**
13 **and only President of the BOD by asserting that the**
14 **Declarant has the complete and sole authority to appoint**
15 **the Board Members without notice, meeting and/or vote**
16 **of the Membership of the Starr pass Master HOA** with total
17 indifference to the Laws of the State of Arizona and total
18 disregard of the Managing Documents for the Starr Pass
19 Master HOA including but not limited to Arizona Laws A.R.S.
20 33-1804, A.R.S 33-1810, A.R.S. 33-1817; Bylaws for the Starr
21 Pass Master HOA including but not limited to Article III,
22 Section 1 and Article III Section 2; and the Master Declaration
23 creating Covenants, Conditions, Restrictions, and Easements
24 for Starr Pass Master HOA including but not limited to Article
25 III, Section 2(b), Article III, Section 5, and Article XI, Section
26 8(b)...."

21 Errors in original.

22 Emphasis in bold.

23 6. On February 1, 2024, the Department issued a Notice of Hearing (NOH)
24 setting the petition for hearing on March 6, 2024.

25 7. The NOH provided that the issue set for determination was, "Petitioner alleges
26 Respondent of violating ARS § 33-1804, 33-1810¹, 33-1817, Bylaw Article Section 1,
27

28 ¹ Petitioner has paid \$500 for a single-issue petition. The allegation that Respondent violated A.R.S. § 33-
29 1810 that relates to audits is a separate issue. The Administrative Law Judge lacks jurisdiction to hear the
30 alleged violation of A.R.S. § 33-1810.

1 CC&Rs Article 3 Section 2(b), Section 5, and Article 11, Section 8, by, operating
2 autonomously with the Declarant serving as the current and only President of the [Board
3 of Directors].”

4 8. A hearing was held on March 6, 2024.

5 9. At hearing, Petitioner testified on behalf of himself.² Mr. Ansley testified on
6 behalf of Respondent.

7 10. Mr. Ansley admitted that he failed to notice or hold annual homeowners
8 association members meetings since 2010. Mr. Ansley stated that stopped holding
9 annual meetings because he tried several times to reach a quorum but was
10 unsuccessful.

11 11. Mr. Ansley contended that he properly acted as the sole person to elect the
12 Board members because he is a Type B member of Respondent. Ms. Ansley contended
13 that the Sixth Amendment to the CC&Rs was appropriately adopted and thereby
14 extended his Type B membership.

15 12. Petitioner contended that Mr. Ansley’s Type B membership lapsed in 2012
16 pursuant to the CC&Rs. Petitioner also contended that Mr. Ansley’s power to appoint
17 the Board of Directors without a meeting and without a vote of the Members expired in
18 2012.

19 13. Petitioner contended that Mr. Ansley’s Type B membership was not renewed
20 because in 2012, Mr. Ansley backdated the “Sixth Amendment” to 2007.

21 14. Although Petitioner argued in his written closing argument that as of
22 November 18, 2012, elections should have begun by the membership under Article 5 of
23 Respondent’s Bylaws, Petitioner did not submit a copy of Respondent’s Bylaws into
24 evidence, nor was section 5 of the Bylaws submitted with the petition.

25
26
27 ² The Administrative Law Judge has read and considered each page of each admitted exhibit, even if not
28 mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every
29 witness, even if the witness is not specifically mentioned in this Decision.

RELEVANT CC&Rs

15. Under Article III, Section 2 of the CC&Rs, Declarant has a Type B membership consisting of three (3) votes for each lot owned by the Declarant and three (3) votes for each planned lot; Type A owners have one vote for each lot owned. Furthermore, Article III, Section 2 of the CC&Rs provided that Type B membership would terminate and convert to Type A the earlier of (i) the time at which the total outstanding votes of Type A equal the total outstanding votes of Type B, or (ii) December 31, 2010.

16. Under Article III, Section 5 of the CC&Rs, from November 18, 1992 for a period of ten years, Declarant had the right to appoint the members of the Board of Directors without a meeting and without a vote of the Members. The Fourth Amendment to the CC&Rs extended the Declarant's power of appointment to 20 years following November 18, 1992.

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.³ Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. Petitioners bear the burden of proof to establish that Respondent violated the Act or Respondent's CC&Rs by a preponderance of the evidence.⁴ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁵

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

³ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.

⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
2 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
3 than the other.”⁷

4 4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give
5 effect to the intent of the parties.⁸ “Restrictive covenants must be construed as a whole
6 and interpreted in view of their underlying purposes, giving effect to all provisions
7 contained therein.”⁹

8 5. It is undisputed that Respondent has not noticed or held an annual meeting of
9 Respondent’s members from 2010 until the current time.

10 6. The undisputed evidence established that Respondent violated A.R.S. § 33-
11 1804(B).¹⁰

12 7. Regarding the remaining alleged violations, the statutes listed in the petition
13 do no bar Mr. Ansley from appointing the Board members or operating as the President
14 of the Board. Additionally, there was no written evidence presented to establish that
15 Respondent’s Bylaws prohibit such actions.

16 8. Therefore, the Administrative Law Judge concludes that Respondent has not
17 violated the statutes listed in the petition, other than A.R.S. § 33-1804(B).

18 9. The Administrative Law Judge concludes that Petitioner has failed to
19 establish that Respondent violated its CC&Rs or Bylaws.

20 **ORDER**

21 **IT IS ORDERED** that Petitioner be deemed the prevailing party in this matter.

22 **IT IS FURTHER ORDERED** that Respondent pay Petitioner his filing fee of
23 \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

24 **IT IS FURTHER ORDERED** Respondent is directed ordered to comply with the
25 requirements of A.R.S. § 33-1804 going forward.¹¹

26 ⁷ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

27 ⁸ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

28 ⁹ *Lookout Mountain Paradise Hills Homeowners’ Ass’n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

29 ¹⁰ A.R.S. § 33-1804(B) requires that a meeting of the members’ association be held at least once each
30 year.

¹¹ While Petitioner requested that he and other owners be appointed to a transition Board, the
Administrative Law Judge’s jurisdiction in this tribunal is limited to ordering a party to abide by applicable

No Civil Penalty is found to be appropriate in this matter.

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, April 23, 2024.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile April 23, 2024 to:

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