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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of

No. 24F-H035-REL

Jesse Freeman,
PETITIONER,

**ADMINISTRATIVE LAW JUDGE
DECISION**

vs.

Millett Ranch Homeowners' Association,
RESPONDENT.

HEARING: July 24, 2024 at 9:00 AM.

APPEARANCES: Jesse Freeman ("Petitioner") appeared on his own behalf. Augustus H. Shaw IV, Esq. appeared on behalf of Millett Ranch Homeowners' Association ("Respondent" and "Association") with Brandon Moore and Chris Redden as witnesses. Nicholas Belisi and Rebecca Cook-Klaus observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, including the Arizona Department of Real Estate's ("Department's") attached agency file, Petitioner Exhibits J and Y, and MINUTE ENTRIES – GRANTING CONTINUANCE dated March 28, 2024, April 03, 2024, May 17, 2024, were admitted into the record.

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

2. On or about January 22, 2024, Petitioner filed a single-issue petition with the Department which alleged that the Association violated Article II Section 8 of its Bylaws by failing to hold a second meeting in order for its membership to vote, after failing to meet

1 quorum during an originally noticed meeting to vote for Board Members.¹ Specifically,
2 Petitioner alleged that only 89 voting members were present during its Annual Meeting on
3 January 16, 2024, shy of 37 additional voting members required to meet a quorum, which
4 resulted in a vote not being held. Petitioner further alleged that notwithstanding a
5 seconded motion from a voting member to adjourn and reset the meeting for 60 days in
6 favor of a second meeting requiring a diminished quorum, the Association declined and
7 ended the meeting in violation of Bylaws Article II, Section 8, as amended October 18,
8 2000. Ultimately, Petitioner sought an Order compelling Respondent to hold a meeting
9 "with the diminished quorum requirement of 15%," repeating the process as necessary
10 until "an election is completed."²

11 a. On January 25, 2024, Petitioner tendered a \$500.00 filing fee to the
12 Department.³

13 3. On February 08, 2024, the Department issued a HOA NOTICE OF PETITION to
14 Respondent.⁴

15 4. On or about February 28, 2024, Respondent returned its ANSWER to the
16 Department whereby it denied all complaint items in the petition.⁵ Specifically,
17 Respondent asserted that the amendment to Association Bylaws Article II, Section 8, had
18 never been voted on, ratified, or implemented by the Association and was therefore
19 invalid. Respondent further argued that even if the amended were valid, Petitioner's
20 argument would nonetheless fail because it did not require the action(s) asserted by
21 Petitioner.

22 5. On March 05, 2024, the Department referred this matter to the Office of
23 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
24 on May 01, 2024.⁶ Per the NOTICE OF HEARING, the purpose of the hearing was to

25 ¹ See Department's electronic file at Millett Ranch ADRE Complaint – 1-22-2024.pdf.

26 ² *Id.*

27 ³ See Department's electronic file at Receipt (2).pdf.

28 ⁴ See Department's electronic file at Notice of Petition (6).pdf.

29 ⁵ See Department's electronic file at ADRE No. 24F-HO35 – Millett Ranch Response to Petition.pdf.
30 Notably, the response form is incorrectly dated "2/28/2023."

⁶ On March 28, 2024, Respondent submitted a MOTION TO CONTINUE, which were granted by the Tribunal.
As a result, the matter was set for continued hearing on May 30, 2024. On April 08, 2024, Respondent
submitted another MOTION TO CONTINUE, which were granted by the Tribunal. As a result, the matter was set

1 determine whether Respondent “failed to comply with Millet Ranch HOA Bylaws Article II
2 Section 8 as amended October 18, 2000” by failing to hold a “second and subsequent
3 meetings of the membership with a diminished quorum of 15% (76 votes).”⁷ [sic]

4 THE PARTIES AND GOVERNING DOCUMENTS

5 6. Respondent is a homeowners’ association whose members own properties
6 in a residential real estate development located in Gilbert, Arizona. Membership for the
7 Association is compromised of the Millett Ranch subdivision.

8 7. Petitioner is a Millett Ranch subdivision property owner and a member of the
9 Association.

10 8. The Association is recognized by the State of Arizona as a domestic
11 nonprofit corporation.⁸

12 9. The Association is governed by its Covenants, Conditions, and Restrictions
13 (“CC&Rs”) and overseen by a Board of Directors (“the Board”). The CC&Rs empower the
14 Association to control certain aspects of property use within the development. When a
15 party buys a residential unit in the development, the party receives a copy of the CC&Rs
16 and Bylaws and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable
17 contract between the Association and each property owner, and the Bylaws outline how
18 the Association is permitted to operate.

19 a. The Association is managed by Brown Management.

20 10. Bylaws Article II – **Members**, Section 8 **Quorum**,⁹ provides the following:

21 The presence at a meeting of Members representing 25 percent of each Class of
22 membership entitled to vote on such matters to be taken up by the Members at
23 such meeting will constitute a quorum for any action, except as otherwise provided
24 in the Articles of Incorporation, the Declaration, or these Bylaws. If however, such
25 quorum will not be present or represented at any meeting, the Members entitled to
26 vote threat will have the power to adjourn the meeting from time to time, without
27 notice, other than an announcement at the meeting, until a quorum will be present
28 or represented.

29 HEARING EVIDENCE

30 for continued hearing on July 24, 2024, whereby it was heard.

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

⁸ See Department's electronic file at Arizona Corporations Commission (5).pdf.

⁹ See Petitioner Exhibit J.

11. Petitioner testified on his own behalf. Brandon Moore and Chris Redden testified on behalf of Respondent. The substantive evidence of record is as follows:

- a. Petitioner has owned residential property within the Association located at 56 W. Betsy Ln. Gilbert, Arizona 85233 since November 1998.
- b. From 2017 to 2018 Petitioner served on the Board as its Treasurer. Petitioner was also employed by Brown Management as a Community Association Manager for nine (9) years.
- c. On January 16, 2024, Petitioner attended the Annual Meeting held by the Association, in large part, to vote in a Board election. Only twelve (12) voting members were present. After it was determined that a quorum was not met, the meeting was not called to order. Instead, the Association moved to adjourn. A motion was made by a voting member to delay the vote and reset the meeting by sixty (60) days, which was seconded by another voting member, but denied by the Association.

ADDITIONAL EVIDENCE

12. Petitioner testified that on or about May 8, 2023, he obtained a purported amendment to Bylaws Article II, Section 8, which he had never seen before, that provides the following:

BYLAWS AMMENDMENTS MILLETT RANCH HOMEOWNERS ASSOCIATION APPROVED BY MEMBERSHIP AT ANNUAL MEETING HELD ON OCTOBER 18, 2000

ARTICLE II – MEMBERS

Section 8. Quorum. The presence at a meeting of Members representing 25 percent of each Class of membership entitled to vote on such matters to be taken up by the Members at such meeting will constitute a quorum of any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. In the event a quorum of 25 percent is not met at the first scheduled meeting of Members, the second and any additional scheduled meeting of the Members for existing year shall require fifteen percent quorum. If however, such quorum will not be present or represented at any meeting, the Members entitled to vote thereat will have the power to adjourn the meeting from time to time, without notice, other than an announcement at the meeting, until a quorum will be present or represented.

(Emphasis and errors in original.)

13. Petitioner testified that he was unable to obtain a meeting notice, agenda, or voting records/ballots from the alleged October 18, 2000, Annual Meeting, but avowed that the record itself had been obtained from City Management; the Association's former property manager, and was also archived on the Association's public website.¹⁰

14. Petitioner conceded that during his tenure on the Board quorum had not been met on multiple occasions, and that the purported amendment to Article II Section 8 of the Bylaws had not been utilized during those instances.

15. Petitioner further conceded that during subsequent Annual Meetings when quorum had not been met, the purported amendment to Article II Section 8 of the Bylaws had not been utilized during those instances either.

16. Mr. Redden testified that when he served on the Board for fourteen (14) years, nine (9) years of which as Board President, that quorum for voting was only met three (3) times, and that it was never reduced, at a secondary meeting or otherwise, so that members could vote. Per Mr. Redden, the purported amendment to Article II Section 8 of the Bylaws was not brought to his attention until 2023. It was not used at the January 16, 2024, Annual Meeting because it would have violated meeting notice requirements.

CLOSING ARGUMENTS

17. In closing, Respondent argued that the underlying petition should be dismissed because Petitioner failed to sustain his burden of proof, as there was never an amendment to Article II Section 8 of the Association's Bylaws. Respondent argued further that the language of the purported amendment did not mandate or otherwise compel the Association to hold a subsequent meeting if quorum failed to be met. Rather, opined Respondent, the plain language of the text simply notes that if a second meeting is held then the quorum requirement would be fifteen (15) percent. Per Respondent, the documents archival on the Association's website was not indicative of validity.

18. In closing, Petitioner argued that his right to vote in the 2024 Board election had been denied by Respondent, and that the purported amendment to Bylaws Article II, Section 8 established the Association's violation of its governing document(s). Petitioner

¹⁰ See Petitioner Exhibit Y.

1 opined that the validity of the document was established, in large part, because it was
2 archived on the Association's website, and further argued that the effect of the
3 document's language was compulsory.

4 **CONCLUSIONS OF LAW**

5 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
6 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
7 condominium and/or planned community association. The owner or association may
8 petition the department for a hearing concerning violations of community documents or
9 violations of the statutes that regulate planned communities as long as the petitioner has
10 filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. §
11 32-2199.05.

- 12 a. Planned Communities are regulated by ARIZ. REV. STAT. Title 33, Chapter
13 16, Article 1.
- 14 b. A planned community is "a real estate development that includes real estate
15 owned and operated by or real estate on which an easement to maintain
16 roadways or a covenant to maintain roadways is held by a nonprofit
17 corporation or unincorporated association of owners, that is created for the
18 purpose of managing, maintaining or improving the property and in which
19 the declaration expressly states both that the owners of separately owned
20 lots, parcels or units are mandatory members and that the owners are
21 required to pay assessments to the association for these purposes."¹¹
- 22 c. A planned community association is "a nonprofit corporation or
23 unincorporated association of owners that is created pursuant to a
24 declaration to own and operate portions of a planned community and that
25 has the power under the declaration to assess association members to pay
26 the costs and expenses incurred in the performance of the association's
27 obligations under the declaration..."¹²

28
29 ¹¹ See ARIZ. REV. STAT. § 33-1802(4).

30 ¹² See ARIZ. REV. STAT. § 33- 1802(1).

1 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
2 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
3 case at bar. OAH has the authority to interpret the contract between the parties.¹³

4 3. In this proceeding, Petitioner bears the burden of proving by a
5 preponderance of the evidence that Respondent committed the alleged statutory
6 violation.

7 4. “A preponderance of the evidence is such proof as convinces the trier of fact
8 that the contention is more probably true than not.”¹⁴ A preponderance of the evidence is
9 “[t]he greater weight of the evidence, not necessarily established by the greater number of
10 witnesses testifying to a fact but by evidence that has the most convincing force; superior
11 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
12 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
13 the other.”¹⁵

14 5. The crux of the case at bar is whether Bylaws Article II Section 8 were
15 amended by the Association, and if so, whether Respondent is in violation of said
16 governing documents for failing to hold a subsequent vote, with a reduced quorum
17 requirement, after a quorum was not reached to vote for Board members at the Annual
18 Meeting held January 16, 2024.

19 6. Based upon a review of the credible and relevant evidence in the record,
20 Petitioner has failed to sustain his burden of proof.

21 7. Here, Petitioner did not present sufficient evidence to corroborate his
22 assertion that the Association voted, ratified, or otherwise implemented an amendment to
23 Bylaw Article II Section 8. Petitioner conceded that during his tenure on the Board and
24 thereafter he was unaware of the purported amendment’s existence, notwithstanding
25 several instances over a number of years where voting members failed to meet quorum
26 requirements and did not utilize the provisions of the alleged amendment. The
27 document’s presence on the Association’s website does not establish or tend to suggest

28 ¹³ See *Tierra Ranchos Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ¹⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ¹⁵ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 that members participated in a vote on or about October 18, 2000, or that the Association
2 adopted an amendment to Bylaw Article II Section 8 thereafter. Moreover, the document
3 itself does not have an embossed stamp or seal, or reflect at least one (1) signature that
4 would reasonably suggest it was indeed a valid governing document, rather than a failed
5 proposal or draft, which is supported by the fact that a filing receipt was not affixed.

6 8. Though a moot ancillary issue, the language of the purported amendment is
7 not compulsory as Petitioner has vehemently alleged. It states plainly, in pertinent part, "In
8 the event a quorum of 25 percent is not met at the first scheduled meeting of Members,
9 the second and any additional scheduled meeting of the Members for existing year shall
10 require fifteen percent quorum." There are no accompanying words that are inherently
11 binding such as *shall* or *must* that would require Respondent to hold a second meeting
12 based on the aforementioned verbiage used.

13 9. Neither of Petitioner's arguments are dispositive in light of more credible
14 evidence to the contrary.

15 10. Thus, the undersigned concludes that because Petitioner failed to sustain
16 his burden of proof that the Association violated Bylaws Article II Section 8, his petition
17 must be denied.

18 **FINAL ORDER**

19 Based on the foregoing,

20 **IT IS ORDERED** that Petitioners' petition be denied.

21 *In the event of certification of the Administrative Law Judge Decision by the*
22 *Director of the Office of Administrative Hearings, the effective date of the Order will be five*
23 *days from the date of that certification.*

24 **NOTICE**

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

30 Done this day, August 09, 2024.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted electronically to:

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