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No. 24F-H041-REL

ADMINISTRATIVE LAW JUDGE DECISION

Paradise Park Condominiums Phase II
Homeowners Association,
Respondent.

APPEARANCES: Deborah Masear (Petitioner) represented herself. Attorney Erica L. Mortenson represented Paradise Park Condominiums Phase II Homeowners Association (Park).

EXHIBITS ADMITTED INTO EVIDENCE: Hearing File; Petitioner's Exhibits 1 and 2; Respondent's Exhibits A through C.

1. Pursuant to Arizona Revised Statutes (A.R.S.) § 33-1801 et seq., the Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of planned community associations in Arizona.

3. Park By-Laws Article III, Section 1 provides, in pertinent part:

4. In the Petition, Petitioner alleged that Frank Maiz was on the Ballot for the 2024 Annual Meeting elections and, thus, Park allowed Frank Maiz to run for a Board of

² See Park Exhibit A.

1 Directors position even though he was not the spouse of an owner, in that his spouse was
2 not an owner in Park. Petitioner alleged that this circumstance had also occurred
3 previously despite “documentation”³ having been provided “on many occasions”
4 regarding Frank Maiz not being an owner, and not being eligible to run for office and, when
5 elected to serve in the past, serving in violation of the By-Laws.

6 5. Park filed its Response to the Petition, denying the allegations.

7 6. The matter was referred to the Arizona Office of Administrative Hearings
8 (Tribunal) for conduct of an administrative hearing regarding the Petition.

9 7. At hearing, Petitioner’s position was that the subject property in Park, *i.e.*,
10 Unit 245, was owned by the daughter of Mr. and Mrs. Maiz and the daughter did not live in
11 Park. Petitioner argued that “Mercedes B.B. Maiz” is the daughter.

12 8. In this instance, Petitioner relied on public records which state that the
13 property owner is “Mercedes B.B. Maiz,”⁴ and that, on May 1, 2023 a Beneficiary Deed
14 was recorded showing “Mercedes B.B. Maiz” as the “Seller.”⁵ Petitioner maintained that
15 “Mercedes B.B. Maiz” is the daughter, ergo, she is the one “selling” the property per that
16 deed.

17 9. Frank Maiz gave sworn testimony at the hearing regarding his full name
18 being Frank German Maiz. Frank German Maiz further testified that he is the spouse of
19 Mercedes B.B. Maiz.⁶

20 10. Mercedes Bofill Benaches Maiz, also known as Mercedes B.B. Maiz, gave
21 sworn testimony regarding her full name and her marriage to Frank German Maiz in 1975.
22 Mercedes B.B. Maiz further testified that she purchased the subject property in 1990.⁷

23 11. Mercedes B.B. Maiz testified that she executed the Beneficiary Deed on
24 April 29, 2023 indicating that, upon her death, the subject property is deeded to her
25 daughter, Mercedes Bofill Maiz, and her son, Frank Bofill Maiz.⁸ Mercedes B.B. Maiz
26 forthrightly testified that, at the time she executed the Beneficiary Deed, she was about to

27 ³ Petitioner did not provide such referenced “documentation.”

28 ⁴ See Petitioner Exhibit 1 at page 1.

29 ⁵ *Id.* at page 2

30 ⁶ See Park Exhibit C, Marriage Certificate [1975].

⁷ See Park Exhibit B.

⁸ *Id.*

1 have major surgery and wanted to have the deed in place in case something happened to
2 her, inferring during or as result of the surgery. In the public record, as to the Beneficiary
3 Deed, the names of the daughter and son are stated as Mercedes B. Maiz and Frank B.
4 Maiz, respectively.

5 12. Petitioner argued that the recorded Beneficiary Deed was sufficient to
6 demonstrate that the “daughter,” “Mercedes B.B. Maiz,” is the owner of Unit 245 at Park.

7 13. Park argued that Petitioner’s Petition should be dismissed.

8 **CONCLUSIONS OF LAW**

9 1. This matter lies within the Department’s jurisdiction. Pursuant to A.R.S. §§
10 32-2102 and 32-2199 et al., regarding a dispute between an owner and a planned
11 community association, the owner or association may petition the department for a
12 hearing concerning violations of condominium documents or violations of the statutes that
13 regulate condominiums as long as the petitioner has filed a petition with the department
14 and paid a filing fee as outlined in A.R.S. § 32-2199.05.

15 2. Pursuant to A.R.S. §§ 32-2199(2), 32-2199.01(D), 32-2199.02, and 41-
16 1092, OAH has the authority to consider and decide the contested petitions, the authority
17 to order any party to abide by the statute, community documents and contract provisions
18 at issue, the authority to interpret the contract *between the parties*, and the authority to
19 levy a civil penalty on the basis of each proven violation. *See also Tierra Ranchos*
20 *Homeowners Ass’n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

21 3. In these proceedings, a petitioner bears the burden of proving by a
22 preponderance of the evidence that a respondent has violated the planned community
23 document(s’) provisions or statutes alleged to have been violated.⁹

24 4. “A preponderance of the evidence is such proof as convinces the trier of fact
25 that the contention is more probably true than not.”¹⁰ A preponderance of the evidence is
26 “[t]he greater weight of the evidence, not necessarily established by the greater number of
27 witnesses testifying to a fact but by evidence that has the most convincing force; superior
28 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

29 ⁹ See ARIZ. ADMIN. CODE R2-19-119.

30 ¹⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”¹¹

5. The hearing record clearly demonstrated that Petitioner is mistaken regarding the current ownership of Unit 245 at Park and the name of the owner.

6. The hearing record clearly documented that Mercedes B.B. Maiz owns Unit 245 at Park.

7. The hearing record clearly documented that Frank German Maiz is married to Mercedes B.B. Maiz.

8. Based on the evidence of record, Frank German Maiz is the spouse of the owner of Unit 245 at Park and, therefore, Park is not in violation of Park By-Laws Article III, Section 1, in allowing Frank Maiz’s name to be on the ballot for election to the Park Board of Directors and to be elected, and serve, on the Park Board of Directors.

9. In this case, the Administrative Law Judge concludes that Petitioner has failed to meet the burden to demonstrate Park is in violation of its By-Laws. The Administrative Law Judge concludes that Park is in compliance with its By-Laws. Therefore, Petitioner’s Petition should be dismissed.

ORDER

IT IS ORDERED Petitioner’s Petition is dismissed and Park is deemed the prevailing party.

IT IS ORDERED Petitioner shall bear her filing fee.

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, August 14, 2024.

/s/ Kay Abramsohn
Administrative Law Judge

¹¹ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

Transmitted electronically to:

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