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No. 25F-H022-REL

ADMINISTRATIVE LAW JUDGE DECISION

HEARING: February 29, 2025 at 1:00pm

APPEARANCES: Angel Miera, Petitioner; Bill Miera, Petitioner Witness. Gladis Hernandez and Fernanda Lopez on behalf of Respondent.

ADMINISTRATIVE LAW JUDGE: Nicole Robinson

EXHIBITS ADMITTED INTO EVIDENCE: Arizona Department of Real Estate Notice of Hearing Packet (“Packet”); Petitioner Exhibits; Respondent Exhibit.

BACKGROUND AND PROCEDURE

2. On or about November 5, 2024, Angel Miera (“Petitioner”) filed a one issue petition¹ with the Department which alleged that Dartmouth Trace Homeowners Associations, Inc., (“Respondent”) violated its Covenants, Conditions, and Restrictions (“CC&Rs”) Sections 17, 6.1, 6.2, and 5. In addition to a violation of Respondent’s Bylaws Articles I, Section 3; Article VI, Section 3(b); and Article IX, Section 2.

3. The relief requested by Petitioner, other than ordering Respondent to pay to Petitioner the filing fee required by ARIZ. REV. STAT. § 32-2199.01 if Petitioner prevailed, includes the following: (1) Order a party to abide by the Arizona statute specified in the complaint section, (2) Order a party to abide by the section(s) of the

¹ See Packet at HOA Petition Form.

condominium/planned community document(s) specified, and (3) Impose a civil penalty based on the violation specified (penalties, if granted, are awarded to the state, not the Petitioner).²

4. On November 12, 2024, the Department sent a Homeowner's Association ("HOA") Notice of Petition to Respondent which informed Respondent of the petition initiated against it. In addition, the petition informed Respondent to send a timely response to the Department and to Petitioner no later than December 8, 2024.³

5. On or about December 6, 2024, Respondent returned its Answer to the Department whereby it denied Petitioner's claims.⁴

6. On or about December 27, 2024, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing⁵ to address the issues set forth as follows:

The Petitioner's allegation within the petition states, "The primary issue is the HOA's failure to enforce Section 17 of the CC&Rs, which prohibits transient, or hotel use and requires leases of at least 30 days, thereby undermining the residential character, stability, and property values of the community and detrimentally impacting the quality of life for all residents."⁶

The Notice of Hearing lists the dispute as a violation of Articles I, Section 3, Article VI, Section 3(b); and Article IX Section 2 of the Homeowners Association's Bylaws and Section 17, 6.1, 6.2 and 5 of the Homeowners Association's CC&Rs by failing to enforce Section 17 of the CC&Rs.⁷

THE PARTIES AND GOVERNING DOCUMENTS

7. Respondent is a condominium/community association whose members own condominiums in the Dartmouth Trace residential community located in Mesa, Arizona in Maricopa County. The community is managed by property management firm Ogden & Company, Incorporated ("Ogden"). Dartmouth Trace consists of approximately 118 condominium units.

² *Id.*

³ See Packet at Notice of Petition.

⁴ See Packet at HOA Response.

⁵ See Packet at NOH Approved.

⁶ See Packet at HOA_Petition_Form.

⁷ See Packet at NOH Approved.

1 8. Petitioner is a Dartmouth Trace condominium property owner and a
2 member of the Association.

3 9. The governing documents include the Dartmouth Trace Bylaws and the
4 Dartmouth Trace CC&Rs.

5 10. The **Dartmouth Trace Bylaws**⁸ provides, in pertinent part, these sections:

6 Article I, Section 3. Application of Bylaws. All present and future Owners,
7 Occupants and their respective licensees, invitees and employees shall be
8 subject to and be bound by all of the provisions of these Bylaws. The act
9 of ownership or the mere occupancy of a Unit shall establish a conclusive
presumption that these Bylaws are accepted, ratified and will be complied

10 Article VI, Section 3. Quorum. (b) Adopt and publish rules and
11 regulations governing the use of the Common Elements and related
12 facilities, and the personal conduct of the Members and their guests
thereon, and to establish penalties for the infraction thereof.

13 Article IX, Section 2. Assessments for Common Expenses. The
14 estimated annual budget for the Common Expenses for each fiscal year
15 shall be approved by the Board, and copies thereof shall be furnished by
16 the Board to each Member not later than thirty (30) days prior to the
17 beginning of the fiscal year. On or before the first day of the first month of
18 each fiscal year, the Board shall assess each Unit and each Member for
19 his respective share of the expenses of operating, maintaining, repairing
20 and restoring the Common Elements in accordance with the proportionate
21 interest in the Common Elements appurtenant to the particular Unit. The
22 assessment levied against each Unit and each Member shall be payable
23 in twelve (12) equal monthly installments commencing on the first day of
the first month of the fiscal year and on the first day of each succeeding
month thereafter. Payment of the Common Expenses, including any
prepayment thereof required by any contract for the sale of a Unit, shall be
payable monthly in such amounts and in such manner as may be provided
in these Bylaws, the Articles of Incorporation, the Declaration or as
determined by the Board.

24 11. The **Dartmouth Trace CC&Rs**⁹ provides, in pertinent part, these sections:

25 5. Parking Spaces. There shall be two types of Parking Spaces, called
26 "Restricted Parking Spaces" and "Guest Parking Spaces."

27 6.1. Restricted Parking Spaces. Restricted Parking Spaces shall
28 constitute part of the Common Elements as shown and numbered on the
Flat attached hereto as Exhibit "B". Upon the sale and conveyance of

29 ⁸ See Packet at Petition and Supporting Docs, Dartmouth Trace Bylaws.

30 ⁹ See Packet at Petition and Supporting Docs, Dartmouth Trace CC&Rs.

1 each Unit to an Owner, Declarant shall assign in the deed of conveyance
2 one or more Restricted Parking spaces to such Unit together with an
3 exclusive easement over and across the assigned Restricted Parking
4 Space or Spaces appurtenant to the particular Unit for parking purposes,
5 which easement shall be subject to the rights granted herein to the
6 Association to manage, operate, maintain, repair and restore the Common
7 Elements. So long as Declarant remains the Owner of any Unit but in no
8 event later than May 1, 1990 there shall be reserved unto Declarant an
9 exclusive easement over and across all of the unassigned Restricted
10 Parking Spaces for parking purposes which easement shall be deemed to
11 be appurtenant to the Units of which Declarant is the Owner. No easement
12 for the use of a Restricted Parking space shall be sold, leased,
13 mortgaged, assigned or otherwise transferred separate from the particular
14 Unit to which it is appurtenant, provided, however, that two or more
15 Owners may with the prior written consent of the Board and the
16 Mortgagees of the Units affected, agree to exchange parking easements
17 appurtenant to their Units provided, further, that any such exchange
18 agreement shall result in all Units affected having an easement over at
19 least one of the Restricted Parking Spaces. A complete list of the names
20 and addresses of the persons entitled to use the Restricted Parking
21 Spaces shall be maintained by the Association at all times, and the
22 Association may exclude from any Restricted Parking Space any person
23 who is not so listed.

24 6.2 Guest Parking Spaces. Guest Parking Spaces shall be part of the
25 Common Elements as shown on the flat attached hereto as Exhibit 'B' and
26 the Board shall have full authority to establish, operate, and manage the
27 Guest Parking Spaces for and on behalf of all Owners, and the use
28 thereof shall be subject to such rules and regulations as may be imposed
29 by the Board.

30 17. Use and Occupancy Restrictions.

No part of the Property shall be used other than as a dwelling and the
related common purposes for which the Property Was designed, except
that Declarant shall have the right to maintain sales and any other offices,
model units, and signs on the Property, together with rights of ingress and
egress therefrom, and to do such other acts and maintain such other
facilities as are incidental to the development and sale of the Units now or
hereafter existing in the horizontal property regime created hereby or in
Phases II through IX if Dartmouth Trace is expanded to include such
Phase Cs). No Owner shall permit his Unit to be used for transient or
hotel purposes or shall enter into any Lease for less than the entire Unit or
for a term of less than thirty (30) days. Any Lease for any Unit shall be in
writing, shall in all respects be subject to and in compliance with the
provisions of this Declaration, the Articles and Bylaws and shall expressly
provide that a violation of any such provisions shall be a default under

1 such Lease, and a copy of any such Lease shall be delivered to the
2 Association prior to the commencement of the term of such Lease.

3 HEARING EVIDENCE

4 12. Petitioner testified on her own behalf and presented the testimony of Bill
5 Miera. Respondent presented the testimony of Gladis Hernandez and Fernanda Lopez.
6 Administrative notice was taken of the Department's electronic file and NOTICE OF
7 HEARING. The substantive evidence of record is as follows:

8 a. Petitioner has lived in the community for approximately 11 years
9 with her son. The community is down the street from the Chicago Cubs
10 Spring Training facility with tourists and locals that swarm the area at the
11 height of spring training.

12 b. In March 2022, Petitioner sent a letter to the HOA and Ogden
13 regarding her past and present concerns with units in the community
14 being used as short-term rentals in violation of the community's CC&Rs.
15 Petitioner testified that in the aforementioned correspondence she
16 provided all known Airbnb¹⁰ and VRBO¹¹ listings at Dartmouth Trace to the
17 HOA and Ogden.¹² Petitioner stated that based on her own research she
18 discovered these listings, including listings by two Board Members that
19 rent out their units, and nothing was done to curtail this behavior because
20 the short-term rentals continued to happen.

21 c. On March 10, 2022, Lori P. ("Ogden President"), responded in an
22 email to Petitioner that states in part, "*I am in receipt of your letter
23 regarding short term rentals in the community. I understand that you think
24 it is Ogden's job to enforce certain rules and regulations. Please
25 understand that we work under the direction of the Board of Directors.
26 This is an important issue that needs to be discussed during an open
27 meeting. Ogden does not have the ability to set up dummy accounts to*

28 ¹⁰ Airbnb is a company that provides an online marketplace for short- and long-term rentals.

29 ¹¹ VRBO is a company that provides an online marketplace for short- and long-term rentals.

30 ¹² See Packet at Petition and Supporting Docs, Airbnb Lori P, March 2022.

1 *try to find out addresses of AirBNB's. This is a community issue that*
2 *requires specific direction from the board and the community's legal*
3 *counsel."*

4 d. In May 2022, Ogden sent an alert message¹³ to Dartmouth Trace
5 homeowners which stated:

6 Dear Homeowners
7 Dartmouth Trace PROHIBITS SHORT TERM RENTALS and
8 the HOA Board is, and always has, enforced this rule.
9 Please see the attached CC&R's [sic].
10 It is made clear in the CC&R's [sic] that it's prohibited from
11 renting a resident for any less than 30 days.
12 Please report violations to the community manager [name
13 and email] if you have substantiated evidence.
14 Corroborated documentation would be an Airbnb ad with
15 identifying information, such as an address AND unit
16 number, homeowner's name, etc...
17 Unfortunately, just because it is thought or considered to be
18 a unit renting short term, it's not enough to send a violation
19 notice.
20 Thank you for everyone's assistance and support!
21 Sincerely,
22 *Ogden and Company on behalf of Dartmouth Trace HOA*

23 e. On January 11, 2023, Petitioner sent a letter to the HOA and
24 Ogden about her continued concerns regarding short-term rentals, units
25 26 and 27 in particular, and requested that this item be put on the
26 upcoming agenda.¹⁴

27 f. On January 19, 2023, Petitioner sent a service request to Ogden
28 regarding unit 25 and a suspected short-term renter that was parked next
29 to her assigned parking space. The vehicle was oversized, and Petitioner
30 requested that the HOA Board reach out to the owner of unit 25 to deal
 with the variety of people parking in that space in violation of CC&Rs

¹³ See Respondent Exhibit, email from Ogden dated May 20, 2022, Subject: Message from Dartmouth Trace HOA – Short Term Rentals.

¹⁴ See Packet, HOA Response, HOA Supporting Documents at pdf page 9.

whereby reserved spaces are for unit owners and guest parking is limited.¹⁵

g. On March 1, 2024, Petitioner asked Ms. Gladis Hernandez, Dartmouth Trace Community Manager and Ogden employee, via email for her to confirm whether Dartmouth Trace had 25 or 27 confirmed short-term rentals. Ms. Hernandez responded “25 *that have been registered by the homeowners*.”¹⁶

h. On April 25, 2024, Petitioner reached out to HOA Board members and Ogden regarding her concerns about short-term rentals.¹⁷

i. On September 16, 2024, Petitioner reached out to Ms. Hernandez regarding her concerns with short-term rentals in the community. Ms. Hernandez responded via email, “*To address your concerns regarding the short-term rentals there is nothing we can do unless you have the ad that specifically shows the unit number, which was discussed at our last meeting*.”¹⁸

j. On November 2, 2024, Petitioner emailed Ms. Hernandez regarding another oversized vehicle in unit 26 parking space. Petitioner explained that after she parked her vehicle that she could not exit her car due to the oversized vehicle. The oversized vehicle did not belong to the unit 26 owner but to a short-term renter.¹⁹

k. Bill Miera, co-owner of Miera, LLC and father of Petitioner, attended a HOA Board meeting in 2023 and witnessed Petitioner be ignored and her agenda ideas be dismissed. In addition, at the Board Meeting, Mr. Meira heard a Board Member state that he did not want to be a bad guy and did not want to administer fines in regards to short-term rentals.

¹⁵ *Id.* at pdf pages 11 – 12.

¹⁶ See Packet at Petition and Supporting Docs, Email 25 Gladis Hernandez.

¹⁷ See Packet, HOA Response, HOA Supporting Documents at pdf pages 68 – 70.

¹⁸ See Packet at Petition and Supporting Docs, Email Gladis Hernandez Short Term Rentals.

¹⁹ See Packet, HOA Response, HOA Supporting Documents at pdf page 79.

1 monitoring assigned and guest parking spaces which were being misused by transient
2 short-term rental guests. The Petitioner expressed in her closing statement that the
3 relief she sought was (i) to mandate enforcement per the Use and Occupancy
4 Restrictions per the CC&Rs; (ii) to establish transparency and oversight by way of a
5 tracking system; (iii) to issue a formal written notice to all homeowners regarding the
6 short-term rental rules; (iv) to address conflicts of interest whereby Board Directors
7 could not violate short-term rules and must live on site; (v) to reimburse Petitioner's
8 HOA dues in the amount of \$8,000 and recoup her filing fee of \$500; and (vi) to compel
9 the HOA to formally acknowledge its failure to enforce short-term rental rules which
10 constituted a pattern of retaliation against homeowners who advocated for compliance,
11 which would serve as the legal foundation for Petitioner's future claims against the
12 HOA.

13 *Respondent's argument*

14 14. Respondent asserted that Petitioner's concerns were valid and
15 acknowledged that short-term rentals had been a challenge, not only at Dartmouth
16 Trace, but at condominium associations statewide. Respondent argued that any HOA
17 assessments paid by Petitioner should not be refundable or suspended because those
18 fees covered the communities operating expenses and reserves.

19 **CONCLUSIONS OF LAW**

20 1. The Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and
21 32-2199 *et seq.*, is regarding a dispute between an owner and a condominium/
22 community association. The owner or association may petition the department for a
23 hearing concerning violations of community documents or violations of the statutes that
24 regulate planned communities as long as the petitioner has filed a petition with the
25 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

26 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-
27 2199.01(D), 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and
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1 decide the contested case at bar. OAH has the authority to interpret the contract
2 between the parties.²⁰

3 3. In this proceeding, Petitioner bears the burden of proving by a
4 preponderance of the evidence that Respondent violated the aforementioned CC&Rs
5 and the Bylaws.²¹

6 4. "A preponderance of the evidence is such proof as convinces the trier of
7 fact that the contention is more probably true than not."²² A preponderance of the
8 evidence is "[t]he greater weight of the evidence, not necessarily established by the
9 greater number of witnesses testifying to a fact but by evidence that has the most
10 convincing force; superior evidentiary weight that, though not sufficient to free the mind
11 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
12 side of the issue rather than the other."²³

13 5. Condominium Associations are regulated by ARIZ. REV. STAT. Title 33,
14 Chapter 9, Article 3. In pertinent part, ARIZ. REV. STAT. § 33-1242(A) provides as
15 follows:

16 Subject to the provisions of the declaration, the association **may**:

17 (11) . . . impose reasonable monetary penalties on unit
18 owners for violations of the declaration, bylaws and rules of
19 the association. . . .

20 (16) Exercise any other powers that may be exercised in this
21 state by legal entities of the same type as the association.

22 6. In this case, Petitioner was diligent to inform the HOA and Ogden of
23 individual homeowners that she believed were in violation of the short-term rental rules
24 in tandem with the parking issues she experienced. However, this circumstance
25 pertains to homeowners that potentially violated the CC&Rs and not the HOA.
26 Ultimately, Petitioner's underlying complaint is a homeowner versus homeowner
27 argument and that type of complaint is not addressed in this forum.

28 ²⁰ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ²¹ See ARIZ. ADMIN. CODE R2-19-119.

30 ²² MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

²³ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

7. As such, Petitioner has not established by a preponderance of the evidence that Respondent violated Ariz. Rev. Stat. § 33-1242(A)(11) which states in pertinent part that the “Association **MAY**. . . impose reasonable monetary penalties.” The Association cannot violate the Use & Occupancy restrictions or the Bylaws cited by Petitioner in her complaint; a homeowner can but not the HOA.

8. The Tribunal heard testimony regarding the lack of participation of homeowners to become Board Directors, however, individuals cannot be forced into an election or made to remain in their positions. Furthermore, the Tribunal has no jurisdiction to create more stability, in this regard.

9. In addition, the Tribunal has no jurisdiction to mandate that the Association reimburse Petitioner's HOA dues which is out of the purview per this Order.²⁴

10. Petitioner is not barred from seeking further legal recourse outside the administrative jurisdiction of the Department.

11. The undersigned Administrative Law Judge concludes that, because Petitioner failed to meet her burden of proof that Respondent committed the alleged violation, her petition must be denied.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition be denied.

IT IS FURTHER ORDERED pursuant to ARIZ. REV. STAT. § 32-2199.02(A), Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. § 32-2199.01.

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 with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

²⁴ See ARIZ. REV. STAT. § 32-2199.02 regarding orders, penalties and disposition.

1 Done this day, March 27, 2025.

2
3 /s/ Nicole Robinson
4 Administrative Law Judge
5

6 Transmitted by either mail, e-mail, or facsimile March 27, 2025 to:

7 Susan Nicolson, Commissioner
8 Arizona Department of Real Estate
9 100 N. 15th Avenue, Suite 201
10 Phoenix, Arizona 85007

11 Attn:

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30