

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 25F-H041-REL

4 Jeremy R. Whittaker

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner,
6 vs.

7 The Val Vista Lakes Community
8 Association

9 Respondent.

10
11 **HEARING:** May 16, 2025

12 **APPEARANCES:** Jeremy R. Whittaker (hereinafter "Petitioner") appeared on
13 behalf of himself. Josh Bolen, Esq. appeared on behalf of The Val Vista Lakes
14 Community Association (hereinafter "Respondent").

15 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

16
17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

19 1. The Arizona Department of Real Estate (hereinafter "the Department") is
20 authorized by statute to receive and to decide Petitions for Hearings from members of
21 homeowners' associations and from homeowners' associations in Arizona.

22 2. Respondent is a homeowners' association whose members own property
23 and/or residences in the Val Vista Lakes development in Gilbert, Arizona.

24 3. It is undisputed that Petitioner first became an owner of property in the Val
25 Vista Lakes development in in June of 2024.

26 4. On or about May 20, 2019, Petitioner filed a single-issue petition with the
27 Department alleging that Respondent had violated Article IV, Section 3 of Respondent's
28 Bylaws, because the 2023 Board Candidate Application form did not require disclosure
29 of familial ties or conflicts of interest.

1 5. Diana Ebertshauser and Brodie Hurtado were members of the Board at the
2 time that the petition was filed.

3 6. The Board Candidate forms completed by Ms. Eberthauser and Ms. Hurtado
4 did not require the disclosure of familial ties or conflicts of interest. After the Board
5 election, Ms. Eberthauser and Ms. Hurtado disclosed their familial ties with the law firm
6 that was asked to count the votes cast in election.

7 7. On or about May 20, 2019, Petitioner filed a single-issue petition with the
8 Department alleging that Respondent had violated Article IV, Section 3 of Respondent's
9 Bylaws because the 2023 Board Candidate Application form did not require disclosure
10 of familial ties or conflicts of interest.

11 8. Article IV, Section 3 of Respondent's Bylaws provides:

12 Section 3._ Candidates for the Board of Directors. Nomination for election
13 to the Board of Directors may be made by a call for candidates delivered
14 to all Members at least ninety (90) days I advance of the Annual Meeting
15 of the Members. In no event shall nominations be made from the floor of
16 the Annual Meeting. Each candidate for the Board of Directors must be a
17 Member of the Association. Each candidate for the Board of Directors
18 shall fill out an application which at minimum will require the candidate to
19 disclose any familial, business or ownership relationships with other
20 Directors or candidates; any current or anticipated conflicts of interest with
21 the Association, including whether the candidate is current in
22 Assessments and/or otherwise in violation of the Declaration or Rules; and
23 whether they have previously served on the on the Board. The
24 application shall be made available to all Association Members prior
25 to the election.

26 9. Respondent filed a written answer to the petition asserting that the issue in
27 dispute had been resolved. Respondent admitted that the Candidate Application forms
28 supplied by the 2023 Board to all Board Candidates did not comply with Article IV,
29 Section 3 of Respondent's Bylaws.

30 10. Accordingly, the Administrative Law Judge determined that the sole issue to
be determined at hearing was whether a civil penalty should be imposed on the
Association.

11. Prior to the hearing, Respondent filed a written motion to dismiss the petition for lack of standing. Respondent also contended that a civil penalty was not appropriate.

12. At hearing, Petitioner did not present relevant evidence to establish that a civil penalty should be imposed. Respondent objected to the imposition of a civil penalty and orally moved to dismiss the petition. Respondent argued that the petition should be dismissed because Petitioner lacked standing to file the petition because was not a member of Respondent at the time of the alleged violation.

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 Title 33, Chapter 16. This matter lies with the Department's jurisdiction.

2. Petitioner bears the burden of proof to establish that Respondent violated A.R.S. § 33-1804(A) and Article IV, Sections 2 and 3 of the Association's Bylaws, by a preponderance of the evidence.¹ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.²

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."³ 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 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁴

4. In Arizona, when construing statutes,

We look first to a statute's language as the best and most reliable index of its meaning. If the statute's language is clear and unambiguous, we give effect to that language and apply it without using other means of statutory construction, unless applying the literal language would lead to an absurd result.

¹ 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).

² See A.A.C. R2-19-119(B)(2).

³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

Words should be given "their natural, obvious, and ordinary meaning."⁵

5. A.R.S. § 32-2199.01 provides:

A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner.

6. The Administrative Law Judge concludes that Petitioner had standing to file the petition. Petitioner was a member of Respondent at the time that the petition was filed.

7. Respondent has admitted that it violated Article IV, Section 3 of Respondent's Bylaws. However Petitioner failed to meet its burden to establish that a civil penalty should be imposed in the above-entitled matter.

ORDER

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

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

IT IS FURTHER ORDERED that Respondent is directed to comply with Article IV, Section 3 of Respondent's Bylaws.

A Civil Penalty is not appropriate in this matter.

The Administrative Law Judge denies all other forms of requested relief.

Done this day, June 5, 2025.

/s/ Velva Moses-Thompson

⁵ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

Administrative Law Judge

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.

Transmitted by either mail, e-mail, or facsimile June 5, 2025 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate

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By: OAH Staff