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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:
Samantha and Millard C. Finch,
Petitioners,
v.
Mountain Gate Community aka Copper
Canyon Ranch,
Respondent.

No. 25F-H017-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: June 13, 2025

APPEARANCES: Samantha Finch represented herself and Millard C. Finch (Petitioners). Attorney B. Austin Baillio represented Respondent.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

EXHIBITS ADMITTED INTO EVIDENCE: Notice of Re-Hearing File (File), provided by the Department of Real Estate.¹ Petitioners' Exhibits 1 through 8 and Exhibit A.² Respondent's Exhibits 1 through 8.³

FINDINGS OF FACT

Background

1. On or about February 26, 2025, the Arizona Office of Administrative Hearings (Tribunal) issued the Administrative Law Judge Decision (Decision) in the underlying administrative matter, 25F-H017-REL.

2. The Administrative Law Judge (ALJ) determined that "Respondent be deemed the prevailing party in this matter regarding Petition Issues 1, 2, 3, and 4."

¹ The File contains marked Exhibits A through F, a copy of the Administrative Law Judge Decision, Petitioners' Dispute Rehearing Petition, Respondent's Response, and the Department's Order Granting Re-Hearing and Notice of Re-Hearing.

² Petitioners' Exhibits 1 through 8 were the same Petitioners' Exhibits 1 through 8 that had been admitted to the February 7, 2025 hearing. They were submitted to the Tribunal in this rehearing by Respondent's attorney; he did not submit the Petitioners' remaining two exhibits, Exhibits 9 and 10.

³ These were the same Respondent's Exhibits 1 through 8 that had been admitted to the February 7, 2025 hearing.

3. The ALJ Decision contained the following Notice:

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.

4. On or about March 28, 2025, Petitioners filed a timely Dispute Rehearing Petition (Dispute Petition), alleging multiple grounds for a rehearing.⁴

5. Pursuant to A.R.S. § 32-2199.04(B), the filing of a petition for rehearing temporarily suspends the operation of the ALJ's Decision and, if the petition is granted, the ALJ's Decision is suspended pending a decision on the rehearing.

6. After considering Petitioners' Dispute Petition and Respondent's Response, on April 29, 2025, the Department issued its Order Granting Re-Hearing and Notice of Re-Hearing (Order). The Department's Order specified the one ground on which the rehearing had been granted as:

Error in the administration or rejection of evidence or other errors occurring during the proceeding.

Dispute Petition

7. In their Dispute Petition, Petitioners questioned whether the law used by the ALJ in the Decision had been the correct law.

8. Post-hearing, Petitioners had requested from the Tribunal copies of the hearing exhibits, and the Tribunal provided copies of exhibits, which were copies of Respondent's admitted exhibits but not copies of Petitioners' exhibits.⁵ On the PDFs

⁴ Two such alleged grounds were (a) that the findings of fact or decision was arbitrary, capricious, or an abuse of discretion, and (b) that the findings of fact or decision was not supported by the evidence or was contrary to law. The Department accepted neither of these alleged grounds as a basis for a rehearing.

⁵ See Petitioners' Exhibit B.

1 included therein was one, PDF 127089, containing Respondent's Exhibit #3 which
2 Respondent had labeled as "Statutes."

3 9. In the Dispute Petition, Petitioners noted that the copies of A.R.S. § 33-
4 1807 and A.R.S. § 33-1803 that were thus found within the administrative hearing
5 record (*i.e.*, in PDF 127089) seemed to not have been printed from the same source
6 and, therefore, the copy of the A.R.S. § 33-1807 law utilized by the ALJ: (a) was
7 unsubstantiated and not the same statute that had been admitted into the record; (b)
8 may not have been an authentic representation of A.R.S. § 33-1807; and, (c) the use of
9 such was done so for an improper purpose. Petitioners took the position that the ALJ
10 had "shrouded the unsubstantiated, unverified ARS 33-1807 document in file
11 127089.pdf as an OAH exhibit," thereby "usurp[ing]" the "properly presented" version
12 Petitioners had presented with its documents.
13
14

15 10. When referencing their "properly presented" version, Petitioners were
16 referring to their Attachment 3 to their original Petition filed with the Department, which
17 Attachment was thereby included within the File exhibits forwarded to the Tribunal for
18 the administrative hearing.

19 11. As indicated in the ALJ Decision, those background documents were
20 admitted to the February 7, 2025 hearing under "Notice of Hearing File, provided by the
21 Department of Real Estate." That Attachment 3 is a reprint of the Title 33 Planned
22 Communities laws, which copy is undated and has no source designation.
23

24 12. Petitioners essentially posit that, had the ALJ used their "properly
25 presented" A.R.S. § 33-1807, it would have refuted the Decision determination that
26 Respondent was the prevailing party. Petitioners argue that such Decision, that
27 Respondent was the prevailing party, had "no support in law," and, therefore, with use
28 of the proper statute, the result would be that Petitioners were, in fact, the prevailing
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30

1 party. Petitioners argue that they did not receive “equal protection of the law” when the
2 “validity of a statute” on which the ALJ based his Decision, was in question.

3 13. Respondent’s Response to the Dispute Petition simply noted that the ALJ
4 had relied on the appropriate version of A.R.S. § 33-1807 which had been in effect at
5 the time of the payment actions in question, beginning in 2019, in the underlying matter.
6 Respondent further noted that the 2024 amendments to A.R.S. § 33-1807 became
7 effective on September 14, 2024 and were prospective law changes, and could not
8 have been applicable to payment treatment in the past.
9

10 **DISPUTE REHEARING**

11 14. At rehearing, Petitioners acknowledged that the ALJ had admitted their
12 submitted documents to the February 7, 2025 hearing record.
13

14 15. Petitioners expressed the concern that their documents had not been
15 considered, *i.e.*, had been rejected, because Petitioners had not received a copy of their
16 own exhibits when the Tribunal sent them copies of the hearing exhibits.⁶ Petitioners
17 argued that they had expected to receive all the documents on which the ALJ had relied
18 in making his Decision, thus alluding to their concern the ALJ had rejected their
19 evidence.
20

21 16. At rehearing, Petitioners’ posited that the Decision was not based on
22 Petitioner’s evidence.⁷
23

24 17. In that regard, Respondent noted that, in his Decision, the ALJ had
25 referenced both exhibits and testimony presented by the parties.
26

27 18. At rehearing, Petitioners alleged the ALJ had either rejected or not
28 considered their submitted evidence because, as an example, the Decision contained a
29 “fact” that was not based on Petitioners’ evidence, inferring that the “fact” was not
30

⁶ See Exhibit B.

⁷ This was clearly an indication that Petitioners disagreed with the ALJ Decision.

1 accurate.⁸ Petitioners failed to point to any of their evidence or exhibits to disprove that
2 particular statement of fact in the ALJ Decision.

3 19. At rehearing, Petitioners alleged that they were not permitted by the ALJ
4 to pursue evidence regarding a “court order.” In a series of questions regarding the
5 application of payments according to the provisions of A.R.S. § 33-1807(J), the
6 Respondent’s witness indicated Petitioners’ payments had been applied according to
7 that statutory language.⁹ When Petitioners then asked whether there had been a court
8 order giving Respondent “authority,” the witness indicated that she did not understand
9 the question. At that point, the ALJ directed Petitioners as follows: “If you’d like to make
10 that argument, you are welcome to do that, but it is sort of asking for a legal
11 conclusion.”¹⁰

12
13 20. Regarding that exchange, Petitioners argued they were trying to present
14 that evidence through questioning the witness, inferring the ALJ prevented them from
15 presenting evidence.
16

17 21. In regard to that exchange, Respondent argued that, in fact, Petitioners
18 had addressed the “court order” argument in their Closing at the February 7, 2025
19 hearing.
20

21 22. At the rehearing, regarding the A.R.S. § 33-1807(J) language, Petitioners
22 argued that Respondent had needed the court order or lien called for in A.R.S. § 33-
23
24

25 ⁸ Petitioner indicated the disputed “fact” was whether they had made a “prepayment” of the December
26 assessment. See Decision at Finding of Fact # 24. This was clearly an indication that Petitioners
27 disagreed with the ALJ Decision.

28 ⁹ Petitioners self-prepared a partial transcript of Part 2 of the February 7, 2025 hearing. See Petitioners’
29 Exhibit A, Part 2 Transcript; so marked at the hearing, not to be confused with the Exhibit A contained in
30 the File; it is noted that this document also contains commentary by Ms. Finch. It must be noted that the
Audio recording of the February 7, 2025 hearing is the official record of that hearing.

¹⁰ See Exhibit A, Part 2 Transcript at page 224.

1 1807 to be able to apply the payments the way it did and that Respondent had not
2 obtained such.¹¹

3 23. At rehearing, Petitioners argued that, all throughout testimony, the ALJ
4 “allowed” witness answers to become legal conclusions.¹² Further, Petitioners argued
5 they were not given a fair hearing on their evidence.¹³
6

7 24. At rehearing, when Petitioners continued to raise points indicating their
8 disagreement with the ALJ Decision, the Tribunal continued to remind them that their
9 rehearing was limited to the one ground granted by the Department, which was “Error in
10 the administration or rejection of evidence or other errors occurring during the
11 proceeding.”

12 25. At rehearing, Petitioners repeatedly stated that they had asked the
13 Department for an extension of time, and had not been given enough time, to prepare
14 their “statement” in response to the Decision, *i.e.*, their disagreement with the
15 Decision.¹⁴ When pressed on this statement, Petitioners indicated that they contacted
16 the Department on May 9, 2025 regarding the requested extension, and the Department
17 informed them the rehearing matter had already been forwarded to the Tribunal.
18

19 **CONCLUSIONS OF LAW**

20 1. The rehearing in this matter was conducted in this matter pursuant to
21 A.R.S. § 33-2199.04.
22

23 2. Petitioners bear the burden of proof by a preponderance of the evidence
24 that there was, as they alleged, “error in the administration or rejection of evidence or
25 other errors occurring during the proceeding.”¹⁵
26

27 ¹¹ This was clearly an indication that Petitioners disagreed with the ALJ Decision.

28 ¹² This was clearly an indication that Petitioners disagreed with the ALJ Decision.

29 ¹³ This was clearly an indication that Petitioners disagreed with the ALJ Decision.

30 ¹⁴ See Dispute Petition.

¹⁵ See A.A.C. R2-19-119(A) and (B)(1); *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

3. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”¹⁶ 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.”¹⁷

4. The Administrative Law Judge concludes that Petitioners failed to meet their burden in this rehearing. The rehearing evidence demonstrated that Petitioners' submitted evidence, for purpose of the February 7, 2025 hearing, was, in fact, admitted to the February 7, 2025 administrative hearing record. Petitioners' arguments fail that the statutes relied on by the ALJ in his Decision either were unsubstantiated or were not the statutes contained within the February 7, 2025 administrative hearing record. Petitioners failed to present any evidence that they were prevented from presenting any evidence at the February 7, 2025 administrative hearing. Petitioners failed to present any evidence of any errors of law occurring during the February 7, 2025 administrative hearing. The Administrative Law Judge concludes that Petitioners' Dispute Petition shall be dismissed.

5. The Department not having granted a rehearing on whether the ALJ's Findings of Fact or Decision were arbitrary, capricious, an abuse of discretion, not supported by the evidence, or contrary to law, the Administrative Law Judge further concludes that Petitioners' arguments in disagreement with the ALJ's Findings of Fact, Conclusions of Law, or Decision were improperly raised in the rehearing and shall be dismissed.

ORDER

¹⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁷ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

