IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Nicholas Thomas, Petitioner, v. Tanglewood Association, Respondent.	**No. 25F-H037-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: May 16, 2025

APPEARANCES: Nicholas Thomas represented himself. Hector Saavedra, Co-President, represented Tanglewood Association.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

EXHIBITS ADMITTED INTO EVIDENCE: Notice of Hearing File (File), provided by the Department of Real Estate.[1] Petitioner Exhibits A through K. HOA Exhibits 1 through 4.

FINDINGS OF FACT

1. The Arizona Department of Real Estate (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 February 7, 2025, Petitioner filed a two-issue petition (Petition) with the Department against the Tanglewood Association (HOA). Petitioner paid the appropriate $1,000.00 filing fee for the Petition.

3. Petitioner alleges that HOA is in violation of CC&Rs and Management Agreement through not performing "their duties outlined" in CC&Rs Page 2, Section A; and Management Agreement, Pages 33-34, Clause Four, subsection a., b., and f.[2]

4. The first alleged violation deals with failure to maintain Association standards of acceptable living standards and make proper repairs to plumbing in the properties. Specific to Petitioner: the backing up of the kitchen sink in Petitioner's unit over the period of October of 2024 through December of 2024; the "snaking" of drain which did not work; the HOA indicating someone would come to address the issue but

[1] The File contains background documents, including Petitioner's Petition and attachments and Respondent's Response.

[2] Both parties presented CC&R document pages represented to have been retyped at some time "from a poor-quality photostat" which is a photographic copy made on an early projection photocopier. The documents indicate that the typed reproduction may contain errors.

not responding as to when, etc.; which resulted in Petitioner having to cancel his lease with tenants because the unit was uninhabitable. Finally, the HOA indicated to owners that the repairs would require a special assessment but still did not say when the work would begin.

5. The second alleged violation deals with HOA having a "management" company that only does the books and does not perform property management functions. Petitioner notes that HOA is not hiring personnel or property managers which would properly maintain and operate the property, including making repairs in a timely manner and maintaining the common areas. Petitioner argues that this violation is a cause of Issue #1 not being handled in a timely manner.

6. The Department referred the matter to the Office of Administrative Hearings (OAH), an independent state agency, for an evidentiary administrative hearing.

BACKGROUND

7. HOA is a residential real estate development located in Maricopa County, Arizona; HOA was developed in and after 1964.[3]

8. Members own properties, *i.e.*, "Units." Petitioner is the property owner of Unit 141 which is located in Building 4.[4]

9. The 54 units in HOA do not have equal voting shares.[5] Petitioner's voting share is 1.707353.[6]

10. A majority of votes is more than 50%[7]; therefore, a majority vote is 50.1%.

11. HOA is governed by its official documents, including Covenants, Conditions, and Restrictions (CC&Rs), its Rules & Regulations [Updated as of 8.23.24], and By-Laws.[8]

12. HOA is also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes (ARIZ. REV. STAT.).

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[3] *See* Exhibit A.
[4] *See* Exhibit 1, Map.
[5] *See* Exhibit A, CC&Rs, Exhibit C.
[6] *Id.*
[7] *See* Exhibit A, CC&Rs, Article II, Voting
[8] With the Petition, Petitioner provided re-typed excerpts from the CC&Rs.

ISSUE #1

13. At hearing, Petitioner argued that, overall, the HOA had not timely addressed the plumbing issue in his unit and he had to cancel his lease (on February 18, 2025) with his tenant. Petitioner argued that the plumbing issue has caused him to suffer damages in kitchen floor and wall damage, and in lost rent. At hearing, Petitioner stated that, in February, that plumbing line was capped so the sink issue has abated for the time being but the unit is not habitable without the use of the sink. Petitioner requested relief in reimbursement of the Petition filing fee, an order with a timeline to HOA to have the plumbing line repairs done, and reimbursement of lost rent.

14. Petitioner owns several units in multiple home owner associations. Karl Kessler manages units for Petitioner; Mr. Kessler has managed this particular HOA unit for Petitioner for a couple of years. Petitioner has never lived in this HOA unit, having purchased it about 4 years ago; it has always been rented.

15. Petitioner stated that he always pays his dues and any special assessments from HOA. However, Petitioner has never voted regarding any HOA special assessments. When questioned on voting, Petitioner essentially indicated that, if he had been more aware of the overall funding and assessment issues, he would have voted and would have voted to approve a special assessment.

16. Letters from HOA go to Mr. Kessler, as Petitioner's point of contact for the HOA. Mr. Kessler sometimes forwards the letters to Petitioner. Mr. Kessler has never been to Petitioner's unit at HOA. Mr. Kessler understood that HOA could not impose a special assessment absent an approval vote; Petitioner erroneously believed that the HOA was already empowered to take special assessment action if needed. Based on the letters received from the HOA and discussions with vendors, Mr. Kessler understood that the issue as to Building 5 had to do with the main sewer lines.

17. Regarding funding, HOA had been raising its dues only by an inflationary number each year, basically due to the composition of owners/tenants and some residents' ability to pay.[9] In 2022 and 2023, HOA's requests to the owners for a special

[9] There are multiple Section 8 housing units and, often, multiple units simply do not pay the dues on time or all at once.

assessment amount was not approved; HOA indicates that it needs 50.1% approval votes.[10]

18. Two years prior to these complaints, HOA had experienced similar plumbing issues in the southern area of the building in which Petitioner's unit is located and spent $15,000.00 to take care of that area.[11]

19. In December 2024, HOA issued a letter to Building 4 unit owners regarding the plumbing issues, and noted that HOA was extremely focused on it but did not yet know what the exact problem was or what/when the fix would be.[12] HOA mentioned that multiple tenants were trying to have the plumber, who was a vendor of the HOA, do work on their particular units, which was interfering with the plumber doing the work HOA was asking them to do regarding the property plumbing issues.

20. Unfortunately, while HOA prepared for a meeting and a vote to address the special assessment, more plumbing failures occurred at the property, which is some 60 years old.

21. In March 2025, the owners were notified that their dues would be increased to help cover mounting expenses.[13] In March owners were also reminded to vote at the upcoming annual meeting regarding a special assessment.[14]

22. By letter dated March 28, 2025, in preparation for the hearing, HOA indicated that, as they received complaints from multiple tenants or owner, HOA now believed that the issues on the north side of the building were the same as had been discovered on the south side of the building. The plumbing vendor had initially believed that the issues could be resolved with $15,000.00 worth of work but then discovered that it was more extensive and that estimate rose by another $10,000.00. HOA acknowledged that, as a small HOA which never had a fully-funded contingency fund, the HOA simply did not have that much money.

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[10] Majority of voting shares is more than 50%. *See* CC&Rs Article II, Voting.
[11] Testimony and Exhibit 4.
[12] *See* Exhibit 2.
[13] *See* Exhibit D.
[14] *See* Exhibit C.

23. In that March 28, 2025 letter, HOA discussed that several owners had not been paying their dues, which led the HOA to be forced to operate with less than what was needed to meet expenses. Further, that Petitioner had not paid a fine that had been on his monthly statement for two years springing from a tenant disregard of trash-disposal rules. Finally, regarding further plumbing failures and the need to address a special assessment, HOA projected that it would conduct a vote at then-upcoming April 10, 2025 meeting and needed the owners' approval to proceed with the repairs to the plumbing lines.

24. At hearing, HOA indicated that the plan for increased dues and the $70,000.00 special assessment was now approved; the plan puts requisite owner payments of these funds in place in phases. HOA needs the money for the repairs and has raised the down payment of $15,000.00. HOA is scheduling the repairs, first to Building 4, which had the most damages, and then to building 5 which has individual lines to each home.

25. HOA indicated that if every owner paid their full dues every month, HOA would have had $1,000.00 to put into a contingency fund every month; however, every owner does not pay and or does not pay in full. HOA noted that, every year, the money available in that contingency fund are exhausted.

ISSUE #2

26. Petitioner argues that a volunteer-run Board simply cannot quickly take the kind of action needed in such circumstances, and that a property management company would be able to more swiftly address things at the property along with being able to address financial matters. Further, Petitioner believed that HOA should be empowered to increase monies (dues or assessment) up to 20%. Petitioner argues that HOA should hire a property management company; in his hearing information, Petitioner noted that the current management company, Colby, also does perform property management but that HOA does not retain those services from Colby.

27. HOA noted that the Board has discussed hiring property management, and noted that the issue really revolves around monies to cover such costs and expenses. HOA indicated that some Board members do live on the property and that

the Board volunteers will try to do a better job; HOA asked to be able to have that opportunity. HOA noted that it will work to improve its communication to owners.

CONCLUSIONS OF LAW

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

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02, and 41-1092, OAH has the authority to hear and decide the contested case at bar and to order a Respondent to follow the alleged operative governing documents. OAH does not have authority to award damages.

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent HOA violated the alleged CC&R provisions.[15]

4. "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]

5. The CC&R Declarations include descriptions of the eight parcels of "Condominium" property as containing 54 separate "freehold estates" which are the spaces within walls of each unit in multi-unit buildings; further, that owners of such units do not own "pipes, wires, conduits or other public utility lines … which are utilized for, or serve

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[15] *See* ARIZ. ADMIN. CODE R2-19-119.
[16] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[17] BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

more than one [unit]."[18] Other than those "freehold estates, the remaining property is/are general common elements consisting of "the compartments or installations of central services for public utilities …"[19]

6. CC&R Management Agreement, Fourth Clause provides as follows, in pertinent part:[20]

> Under the personal and direct supervision of one of its management personnel, Agent shall render services and perform duties as follows:
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> a. Investigate, hire, pay, supervise, and discharge the personnel necessary to be employed in order properly to maintain and operate the Condominium.
> b. Immediately ascertain the general condition of the property …
>
> . . .
>
> f. Cause the common elements of buildings … and grounds of the Condominium to be maintained according to standards acceptable to the Association, including but not limited to … plumbing … and such other normal maintenance and repair work as may be necessary, subject to the limitations imposed by the Association in additions to those contained herein. For any one item of repair … the expense incurred shall not exceed the sum of $1,000.00 nor $200.00 in excess of insurance proceeds available for such purposes unless specifically authorized by the Association; excepting, however, that emergency repairs, involving manifest danger to life, property or immediately necessary for the preservation and safety of property, or for the safety of the members or required to avoid suspension of any necessary service to the Condominium, may be made by Agent irrespective of the cost imitation imposed by this paragraph. Notwithstanding the authority as to emergency repairs, it is understood and agreed that Agent, will if at all possible, confer immediately with the Association regarding every such expenditure. Agent shall not incur liabilities (direct or contingent) which will at any time exceed the aggregate of $5,000.00 … without first obtaining the approval of the Association.

7. The hearing evidence demonstrates that multiple owners and tenants contacted HOA with regard to plumbing issues. The hearing record did not specify the date of the first of these 2024 complaints to HOA. Similar issues had been raised to HOA in the past in a nearby area and had been addressed by HOA.

8. In the Fall of 2024, Petitioner attempted to resolve his tenant's sink drainage issue by calling in a plumber. When those efforts did not resolve the issue,

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[18] *See* Exhibit A, Declarations, A.1 (page 2).
[19] Other real property was reserved as "recreational property" by the Owner. *Id.* at 1.
[20] *Id.* at 33-34.

Petitioner contacted HOA, which had also been contacted by multiple other owners or tenants. In the process of attempting to locate the cause or causes, HOA was given a quote of over $15,000.00, which was an amount of monies the HOA did not have. HOA reached out, not only to Petitioner, but to all owners/tenants regarding the HOA vendor attempting to get to all the units.[21]

9. The hearing evidence demonstrates that, upon receiving complaints, HOA took action and hired a plumbing vendor to address the multiple complaints with the result that HOA was advised the plumbing issues would be costly to repair. Given its financial situation, HOA determined the overall plumbing issues could not be repaired absent a special assessment to cover those specific and projected expenses. The property management agreement provisions prevent any property manager from expending more than $5,000.000 even in an emergency without obtaining Board approval. Therefore, the hearing record demonstrates that more immediate action to repair either Petitioner's plumbing issues or the overall plumbing issues could not have been taken.

10. Further, regarding property management, the hearing record is simply vague. The CC&Rs reference a property manager; the document itself references an Agreement between the "Association" and the "Agent." Because both parties stated that the current "management" company, Crosby was not performing property management functions, it cannot be determined to whom this document now applies, or to whom the document applied in the past, or whether the HOA ever had a property manager. Neither party indicated that HOA previously retained a property management company which Agreement had either expired or been terminated.

11. The Tribunal concludes that Petitioner has not met his burden to demonstrate by a preponderance of the evidence that HOA was not timely performing "their duties outlined" in CC&Rs Page 2, Section A; and Management Agreement, Pages 33-34, Clause Four, subsection a., b., and f.

ORDER

[21] *See* Exhibit 2.

IT IS ORDERED that Petitioner's Petition in 25F-H037-REL be denied and HOA be determined to be the prevailing party.

IT IS FURTHER ORDERED that Petitioner shall bear his filing fees.

IT IS FURTHER ORDERED that no civil penalty is awarded.

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.

Done this day, July 13, 2025.

/s/ Kay Abramsohn
Administrative Law Judge

Transmitted electronically to:

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