

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Brian Sopatyk

Petitioner,

vs.

The Lakeshore Village Condo. Association,
Inc.

Respondent

No. 17F-H1716004-REL

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: November 14, 2016

APPEARANCES: Brian Sopatyk on his own behalf; Bradley R. Jardine, Esq. for
Respondent

ADMINISTRATIVE LAW JUDGE: Thomas Shedden

FINDINGS OF FACT

1. On September 15, 2016, the Arizona Department of Real Estate issued a Notice of Hearing setting the above-captioned matter for hearing on November 14, 2016, at the Office of Administrative Hearings in Phoenix, Arizona.

2. The Notice of Hearing shows that Petitioner Brian Sopatyk alleged that Respondent Lakeshore Village Condominium Association violated ARIZ. REV. STAT. section 33-1260.

3. Section 33-1260(A) requires the condominium association to provide a prospective purchaser with certain information. Section 33-1260(C) allows the association to charge the unit's owner "a fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property."

4. On August 9, 2016, Mr. Sopatyk filed with the Department the petition that gave rise to this matter.

1 5. Through his petition, Mr. Sopatyk alleges that when he purchased a unit,
2 the Association charged a transfer fee of \$660 that was split between him and the seller
3 at closing.

4 6. With his petition, Mr. Sopatyk included a disclosure statement from the
5 Association dated March 2, 2015, that shows a transfer fee of \$660 and a statement fee
6 of \$30, which was to be paid by March 31, 2015.

7 7. Amy Telnes, the Association's manager testified to the effect that the \$660
8 was not a fee collected in accordance with section 33-1260, but rather was a working
9 capital fee.

10 8. The Association's Declaration of Covenants, Conditions and Restrictions
11 at section 8.13: Transfer Fee and Working Capital Fund, calls for an assessment from
12 each new owner of two monthly installments of the annual fee. According to Ms. Telnes,
13 this is what the \$660 fee represented.

14 9. Ms. Telnes testified that the \$660 was put into the Association's reserve
15 fund and to the effect that the \$30 was the fee charged pursuant to section 33-1260(C).

16 10. The Association had admitted into evidence Board Meeting Minutes from
17 May 18, 2016, at which time this issue was discussed. Those minutes show that when
18 Ms. Telnes took over as Association manager, she was incorrectly told that the working
19 capital fee was the transfer fee and that these fees had been incorrectly labelled since
20 that time.

21 11. Ms. Telnes testified that Mr. Sopatyk had been responsible for the issue
22 being addressed at the May 18, 2016, Meeting and that the Board had informed him
23 that the issue was one of labeling, not violating the statute.

24 12. Mr. Sopatyk requests that the Association be ordered to comply with the
25 applicable statute, that refunds be paid to those who have paid a transfer fee in excess
26 of the statutory maximum, and that the a civil penalty be imposed against the
27 Association.

28 **CONCLUSIONS OF LAW**

29 1. The Department of Real Estate has authority over this matter. ARIZ. REV.
30 STAT. Title 32, Ch. 20, Art. 11.

1 2. Mr. Sopatyk bears the burden of proof to show that the Association
2 committed the alleged violation. The standard of proof on all issues in this matter is that
3 of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

4 3. A preponderance of the evidence is:

5 The greater weight of the evidence, not necessarily established
6 by the greater number of witnesses testifying to a fact but by
7 evidence that has the most convincing force; superior
8 evidentiary weight that, though not sufficient to free the mind
9 wholly from all reasonable doubt, is still sufficient to incline a fair
10 and impartial mind to one side of the issue rather than the other.
11 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

12 4. The evidence of record establishes that on the sale of each unit the
13 Association has been charging a working capital fee of \$660 in accordance with section
14 8.13 of the CC&Rs, but has been mislabeling that fee, and it has been charging a
15 document preparation fee of \$30. As such, Mr. Sopatyk has not shown by a
16 preponderance of the evidence that the Association violated ARIZ. REV. STAT. section
17 33-1260.

18 5. Mr. Sopatyk's petition should be dismissed and the Association be
19 deemed the prevailing party in this matter.

20 **ORDER**

21 **IT IS ORDERED** that Brian D. Sopatyk's petition is dismissed.

22 *In the event of certification of the Administrative Law Judge Decision by the Director of*
23 *the Office of Administrative Hearings, the effective date of the Order is five days after*
24 *the date of that certification.*

25 Done this day, November 29, 2016.

26 /s/ Thomas Shedden
27 Thomas Shedden
28 Administrative Law Judge

29 Transmitted electronically to:

30 Judy Lowe, Commissioner
Arizona Department of Real Estate