

N THE OFFICE OF ADMINISTRATIVE HEARINGS

Linda Haderli
Petitioner,

No. 17F-H1717029-REL

VS.

Carriage Manor RV Resort Association, Inc.
Respondent.

ADMINISTRATIVE LAW JUDGE DECISION

HEARING: May 30, 2017

APPEARANCES: Petitioner Linda Haderli was present and represented by Jonathan A. Dessaulles and Ashley C. Hill. Respondent Carriage Manor RV Resort Association, Inc. was represented by Samuel E. Arrowsmith and Ryan J. McCarthy.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. Carriage Manor RV Resort Association, Inc. (Respondent) is an association of homeowners located in Mesa, Arizona.

2. Linda Haderli (Petitioner) filed a Homeowners Association (HOA) Dispute Process Petition (Petition) with the Arizona Department of Real Estate (Department) on or about March 28, 2017, alleging that Respondent did not have the authority pursuant to the Association's governing documents to remove her as President of the Pickleball Club and to preclude her from serving as any officer of the Pickleball Club for a period of 24 months as purported discipline for her conduct.¹

3. Respondent filed an Answer to the petition denying the alleged violation.

4. On April 20, 2017, the Department issued a Notice of Hearing to the parties notifying them that a hearing on the Petition would be conducted by the Office of Administrative Hearings.

5. On May 30, 2017, a hearing was held on the Petition and the parties presented evidence and argument regarding the violation alleged in the Petition which Petitioner had selected to go forward for adjudication.

¹ In the Petition, Petitioner identified multiple alleged violations, but only requested and paid for a single issue petition. Thus, Petitioner was given the opportunity to select the single issue from the Petition on which she wished to proceed to hearing, stated herein.

1 6. At the hearing, the parties agreed in large part to the underlying facts in the
2 matter.

3 7. In the letter notifying Petitioner of the disciplinary action being taken against
4 her, the Association cited as the reasons for the discipline as follows:

5 1. You have challenged the policies set by the Board of Directors by
6 harassing Association employees and circumventing the systems
7 put in place to implement Association policies.

8 2. You have permitted Ms. Joyce Wooton to represent herself as an
9 Officer of the Pickleball Club. The position "Advisor" is not an Officer
10 position pursuant to the Pickleball By-Laws. Furthermore, Ms.
11 Wooton is not the Past President, and cannot act as an advisor to the
12 current President.

13 3. You have represented yourself to the City of Mesa and SRP as
14 having the authority to make decisions on behalf of the Association.
15 The Board of Directors has not authorized you to contact any
16 municipalities or vendors on the Association's behalf.

17 8. As to the first issue, Mary Candelaria, Respondent's General Manager,
18 testified that on January 4, 2017, Petitioner was in the Association's office and had a
19 contentious interaction with an Association employee, Barb Putnam. According to some
20 observers, Petitioner was yelling at Ms. Putnam. The following day, Ms. Putnam went to
21 the hospital with a hemorrhage in her eye. Ms. Candelaria theorized that the stressful
22 encounter with Petitioner the day before was the cause of Ms. Putnam's medical issues.
23 After that, Ms. Candelaria asked the observers to write written statements regarding the
24 interaction, but did not speak to Petitioner about it citing confidentiality concerns.

25 9. Petitioner denied she was yelling at Ms. Putnam, but cited her hearing loss
26 as a reason she sometimes talks louder than others and it may be interpreted as yelling.
27 Petitioner stated she was simply attempting to reserve some dates for fundraising events
28 for the Pickleball Club for the following year, but Ms. Putnam was not being cooperative
29 providing additional information. Petitioner testified that she did not know she had been
30 accused of harassing before reviewing the exhibits for the hearing with her attorney
because no one spoke with her prior to the disciplinary letter.

 10. As to the second issue, Petitioner testified that Ms. Wooton was serving as
an advisor to the Pickleball Club when Petitioner was elected to serve as the Vice
President the year before she was elected to serve as the President on March 1, 2016.

11. As to the third issue, Ms. Candelaria testified that while the Pickleball Club was exploring a project to build a small building by the pickleball courts, Petitioner represented herself to be acting on behalf of the Association to the City of Mesa and SRP. Even after Petitioner was told she should work through the architect to get answers for many of her technical questions, Petitioner kept contacting the City of Mesa and SRP directly.

12. Petitioner testified that she merely approached the City of Mesa and SRP to get background information so she could be more informed as to the project going forward. Petitioner denied ever representing herself as someone with authority to act on behalf of the Association. Petitioner indicated that at first, she did not want to provide her name or address for fear of appearing to be acting in such a capacity. Petitioner only provided the address because different areas of the city have different regulations.

13. Ms. Candelaria testified that when the Horseshoe Club failed to properly maintain financial records, it was disciplined by not being allowed to conduct any fundraising until it came into compliance. Ms. Candelaria also confirmed that the discipline imposed in this matter was against Petitioner in her capacity as a resident who had violated community rules and it was not intended to be discipline of the Pickleball Club as a whole.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to hear disputes between a property owner and a homeowners association. A.R.S. § 32-2199 *et seq.*

2. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent acted without authority granted by its governing documents. A.A.C. R2-19-119.

3. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

4. Section 14.2 of the CC&R's provides, in relevant part, as follows:

Employee Abuse. Abuse of employees by residents is prohibited, including any physical or verbal harassment, intimidation, innuendo or other abuse,

specifically including any of the foregoing relating to racial, sexual, job performance, or employment matters. In the event of a violation of this rule, all remedies under the governing documents shall be available to the Association, including enforcement as an "Other Violation" pursuant to Section 15.2B of the Rules and Regulations.

5. Section 15.2B of the CC&R's provides "Other Violations" are subject to an assessment set by the Board of Directors not to exceed \$500.00.

6. Section 12.2 of the CC&R's provides, in relevant part, as follows:

The Association shall have the right to suspend an Owner's voting rights and the Common Areas use rights for any period during which that Owner's Assessments or other monetary obligations remain delinquent. The Association shall have the right to suspend an Owner's Common Areas use rights for any period during which a non-monetary infraction of this Declaration, the Bylaws or the Association remains uncured.

7. While Respondent asserted its authority to impose the discipline in this case as part of its authority to regulate and oversee clubs created under the governing documents, Respondent made it clear the discipline was the result of Petitioner's actions as a resident and was not intended to be discipline against or resulting from the actions of the Pickleball Club. Therefore, Respondent's ability to regulate and oversee the Pickleball Club is not an issue in this matter.

8. Respondent did not establish that removal as the Pickleball Club President and/or a prohibition of holding any other officer position for a period of 24 months is a remedy available under the governing documents.

9. Therefore, this Tribunal concludes that the Board's decision to remove Petitioner as the Pickleball Club President and to preclude her from holding any other officer position for a period of 24 months was in excess of its authority under the Association's governing documents.

RECOMMENDED ORDER

In view of the foregoing,

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

IT IS FURTHER ORDERED that Respondent's imposed discipline against Petitioner be quashed.

1 IT IS FURTHER ORDERED that Respondent pay Petitioner her filing fee of
2 \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

3 *In the event of certification of the Administrative Law Judge Decision by the Director of*
4 *the Office of Administrative Hearings, the effective date of this Order will be five (5)*
5 *days from the date of that certification.*

6 Done this day, June 18, 2017

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8 /s/ Tammy L. Eigenheer
9 Administrative Law Judge
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12 Transmitted electronically to:

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14 Judy Lowe, Commissioner
15 Arizona Department of Real Estate
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