

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 James and Shawna Larson,
4 Petitioners,

No. 17F-H1717038-REL

5 v.

**ORDER RECOMMENDING
DISMISSAL FOR LACK OF
JUSTICIABLE CONTROVERSY**

6 Tempe Gardens Townhouse Corporation,
7 Respondent.

8
9 On June 16, 2017, Petitioners filed a Petition with the Department of Real Estate
10 and checked the box alleging a violation of Respondent's CC&Rs but did not specify the
11 provisions of the CC&Rs that had been supposedly violated. When the Department
12 emailed Petitioners requesting the specific provisions of the CC&Rs that had allegedly
13 been violated, counsel for Petitioners admitted via email that no specific provisions of
14 the CC&Rs had been violated as a result of Respondent's conduct, but that Petitioners
15 were concerned that section 10(a) of the CC&Rs would be violated if Respondent acted
16 upon its alleged threat to take down Petitioners' patio cover and charge Petitioners the
17 cost of doing so. Because the Tribunal was concerned that the Petition did not contain
18 a justiciable controversy, it invited the parties to brief the matter.

19 In its brief at page 2, Petitioners state that "the true issues underlying this issue
20 are not about whether Respondent's current threatened actions are a violation of the
21 CC&Rs. The true issues relate to Respondent Association's actions and inactions that
22 have lead up to the point where the Parties now find themselves addressing this
23 administrative law panel." Similarly, Respondent urges the Tribunal to exercise
24 jurisdiction and find that Petitioners have violated the CC&Rs via their conduct to date.
25 Both parties fundamentally misunderstand the limits of this Tribunal's jurisdiction.

26 The Office of Administrative Hearings does not have jurisdiction to hear every
27 dispute that might arise between a homeowner and its homeowner's association. Nor
28 does it have jurisdiction to find a homeowner's conduct inappropriate absent an
29 allegation that a homeowner's association has committed a violation of the
30 condominium documents or planned community statutes. A.R.S. § 32-2199 provides

1 that an "administrative law judge shall adjudicate complaints regarding and ensure
2 compliance with: 1. Title 33, chapter 9 and condominium documents [and] 2. Title 33,
3 chapter 16 and planned community documents." A.R.S. § 32-2199.02 limits what the
4 administrative law judge may order and states "[t]he administrative law judge may order
5 any party to abide by the statute, condominium documents, community documents or
6 contract provision *at issue* and may levy a civil penalty on the basis of each violation."
7 (Emphasis added.)

8 The Administrative Law Judge finds that Petitioners have failed to cite any
9 provision of the CC&Rs that Respondent has currently violated and further that no
10 portion of the CC&Rs is currently at issue in the Petition. Petitioners merely refer to
11 actions the Respondent *may* take to require Petitioners to remove their patio cover.
12 These actions have not yet been undertaken and our speculative at this juncture. If
13 Petitioners desire a finding that Respondent may not take such action in the future, it
14 appears the appropriate forum is a declaratory judgment action in superior court. By the
15 same token, if Respondent wishes to enforce certain provisions of its CC&Rs against
16 Petitioners, it can file an enforcement action against Petitioners in superior court.

17 **RECOMMENDED ORDER**

18 IT IS ORDERED that Petitioners' petition in this matter be dismissed.

19 *In the event of certification of the Administrative Law Judge Decision by the*
20 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
21 *40 days from the date of that certification.*

22 Done this day, August 25, 2017.

23 /s/ Suzanne Marwil
24 Administrative Law Judge

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26 Transmitted electronically to:

27 Judy Lowe, Commissioner
28 Arizona Department of Real Estate
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