

BEFORE THE DEPARTMENT OF REAL ESTATE
OFFICE OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

James and Shawna Larson,

Petitioner,

vs.

Tempe Gardens Townhouse Corporation

Respondent.

CASE NO. HO 17-17/038

DOCKET NO. 17F-H1717038-REL

ORDER REJECTING
RECOMMENDATION OF DISMISSAL

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.08, the attached Administrative Law Judge ("ALJ") Recommended Order is rejected by the Commissioner of the Department of Real Estate ("Commissioner") and the following is requested:

ORDER

The Commissioner rejects the ALJ's Recommended Order that this matter should be dismissed for lack of justifiable controversy. In a letter dated June 1, 2017 the Respondent alleges a violation of the CC&R's of the Association. "Is the presence of the awning a violation of the Association's governing documents?" This matter is ripe for adjudication and the Commissioner requests that the hearing be rescheduled and that the Administrative Law Judge rule on the above stated matter.

DATED this 31st day of August 2017.


Judy Lowe, Commissioner
DEPARTMENT OF REAL ESTATE

The foregoing mailed this 31st day of August 2017,

1 Copy via certified mail receipt number 91 7199 9991 7037 6682 8030 to:

2 James and Shawna Larson
3 c/o Lisa Hanger, Esq.
4 14301 N. 87th St., #305
5 Scottsdale, AZ 85260

6 Copy sent via certified mail receipt no. 91 7199 9991 7037 6682 8047 to:

7 Tempe Gardens Townhouse Corporation
8 c/o Brown Alcott
9 5201 N 7th Ave.
10 Phoenix, AZ 85013

11 COPY electronically transmitted to:

12 The Office of Administrative Hearings
13 1400 W Washington St, Suite 101
14 Phoenix, AZ 85007

15 By:

16 

17 Dan Gardner
18 HOA Coordinator
19
20
21
22
23
24
25
26
27
28

AUG 25 2017

IN THE OFFICE OF ADMINISTRATIVE HEARINGS ^{AZ Dept. of Real Estate}

James and Shawna Larson,
Petitioners,

No. 17F-H1717038-REL

v.

Tempe Gardens Townhouse Corporation,
Respondent.

ORDER RECOMMENDING
DISMISSAL FOR LACK OF
JUSTICIABLE CONTROVERSY

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

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

The Office of Administrative Hearings does not have jurisdiction to hear every dispute that might arise between a homeowner and its homeowner's association. Nor does it have jurisdiction to find a homeowner's conduct inappropriate absent an allegation that a homeowner's association has committed a violation of the 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

25
26 Transmitted electronically to:

27 Judy Lowe, Commissioner
28 Arizona Department of Real Estate
29
30