

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Rex E. Duffett
4 Petitioner,

No. 18F-H1818025-REL
No. 18F-H1818027-REL

5 vs.

ADMINISTRATIVE LAW
JUDGE DECISION

6 Suntech Patio Homes Homeowners
7 Association,
8 Respondent.

9
10 **HEARING:** April 4, 2018

11 **APPEARANCES:** Petitioner Rex E. Duffett appeared on his own behalf.
12 Respondent Suntech Patio Homes Homeowners Association was represented by Nathan
13 Tennyson.

14 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

15
16 **FINDINGS OF FACT**

17 1. Suntech Patio Homes Homeowners Association (Respondent) is an
18 association of homeowners located in Arizona.

19 2. Rex E. Duffett (Petitioner) filed a petition with the Arizona Department of
20 Real Estate (Department) on or about January 8, 2018, alleging that Respondent had
21 violated the community documents Conditions, Covenants and Restrictions (CC&Rs).
22 Petitioner's statement of the issue provided Respondent "has failed to respond to
23 repeated requests for repairs to the exterior walls of my unit." The petition was designated
24 by the Department as HO18-18025.

25 3. Petitioner filed a petition with the Department on or about January 23, 2018,
26 alleging that Respondent had failed to comply with the provisions of A.R.S. § 33-1805(A)
27 in that he had requested documents from Respondent on December 22, 2017, and the
28 documents had not been provided. The petition was designated by the Department as
29 HO18-18027.

30 4. Both matters were referred to the Office of Administrative Hearings for
 hearing. Upon the request of the parties, the matters were consolidated for hearing.

1 18F-H1818025-REL

2 5. In March 1993, Respondent's CC&Rs were amended to provide as follows:

3 The Suntech Patio Homeowners Association shall be responsible for the
4 painting and maintenance of the following:

5 A) Exterior walls of all units

6 6. On or about July 14, 2017, Petitioner faxed a message to The Management
7 Trust, Respondent's property management company, which stated, "While inspecting the
8 outside of my property I noticed a crack in the exterior wall. Please inspect, repair and
9 paint the wall as soon as possible to prevent any damage which could result from rain
10 water in the interior of the wall." Petitioner included two photographs of the exterior of his
11 home. The copies of the faxes submitted at hearing were black and white and did not
12 clearly show any damage to the exterior walls.

13 7. On or about August 21, 2017, Petitioner sent a certified mail receipt to The
14 Management Trust, which stated, as follows:

15 I was recently inspecting my property and found some areas that need to be
16 repaired.

17 There is a crack in the wall in the entryway to my unit that allows rain water
18 to seep into the interior wall. There may be other cracks on the top of both
19 sides of the entryway. The area needs to be inspected for structural
20 damage and mold and then repaired.

21 The front wall of the garage has an area of bare concrete. The missing
22 stucco and paint need to be replaced.

23 I had to have an emergency repair made to the side wall of my garage.
24 Lyons roofing made an inspection of my garage roof to find a leak and found
25 the roof was sound but the garage wall was cracked. Water ran down a
26 beam in the garage and damaged the garage ceiling. Lyons repaired the
27 crack but did not paint the repair. The repair job needs to be inspected and
28 the repair painted to match the building.

29 Please make the repairs as soon as possible to prevent additional damage.

30 The letter included three photographs of the exterior of his home. The copies of the letter
submitted at hearing were black and white and did not clearly show any damage to the
exterior walls.

18F-H1818027-REL

1 8. In response to the petition in a separate matter, HO18-17014, Respondent
2 submitted a letter that stated, in pertinent part, "The board was discussing the rules and
3 regulations and updating them in August/September."

4 9. On or about December 22, 2017, Petitioner faxed The Management Trust a
5 letter that provided as follows:

6 In the response the Suntech Patio Homeowners Association sent to the
7 Arizona Department of Real Estate (Case #HO18-17/014 – Rex Deffett)
8 reference was made to meetings held by the board of directors. **"The
9 Board was discussing the rules and regulations and updating them in
10 August / September."**

11 Concerning the board of directors meetings **"discussing the rules and
12 regulations":**

13 For each meeting where the rules and regulations were discussed please
14 provide me with copies of the following documents:

15 Meeting notices

16 Meeting minutes

17 Concerning each meeting where the last increase of SUNTECH PATIO
18 HOMES homeowner association dues were discussed please provide me
19 with copies of the following documents:

20 Meeting notices

21 Meeting minutes

22 In addition, please send me a copy of the notice of the last association rate
23 increase.

24 If any of the decisions were made by unanimous written consent, please
25 provide me with copies of the signed written consent and the minutes filed
26 with the corporate records reflecting the action taken.

27 10. On or about January 29, 2018, Respondent filed a response to the petition
28 indicating that it had only been made aware of Petitioners' request when it received notice
29 of the petition from the Department.¹ Respondent indicated that it had sent the budget
30

¹ Respondent's response created a miscommunication that continued for some months. The response specifically provided, "Received notice of request via mail 1-29-18." Petitioner questioned how Respondent could have received notice of the request via mail when he only sent the request via fax. On February 7, 2018, Petitioner faxed a request for a copy of the "referenced document." On February 26, 2018, Petitioner sent a certified mail request for a copy of the "referenced document." On March 2, 2018, the community manager responded that "I received your fax and other documents from Az Dept of Real Estate. Can you please give me an understanding of what items [you] were requesting that you have not received." On March 5, 2018, Petitioner faxed a third request for the "referenced document." None of these requests are at issue in this matter as they occurred after the petition was filed and appeared resolved by the Administrative Law Judge explaining that "referenced document" was the notice of the petition sent to Respondent by the Department.

1 and assessment letter to Petitioner on that date, but the minutes requested were for
2 closed executive meetings and were only available to Board members.

3 11. At some later date, Respondent provided Petitioner with a copy of the
4 minutes from an October 10, 2017 Association meeting.

5 Hearing Evidence

6 12. At hearing, Petitioner testified that he discovered a leak in his garage ceiling
7 and he called a roofing company to inspect the roof to determine the source of the leak.
8 Petitioner stated that the roofing company informed him that the leak was from coming
9 from the roof, but was coming from a crack in the exterior wall.

10 13. Rebecca Stowers, Community Manager, testified that Pride Community
11 Management (Pride) took over Respondent's management from The Management Trust
12 on February 1, 2018. Shawn Mason, from The Management Trust, had provided the
13 initial responses to the petitions at issue in this matter. Ms. Stowers stated that The
14 Management Trust had provided Pride only one box of information when it took over, but
15 recently informed Pride that it had discovered seven or eight more boxes that needed to
16 be retrieved from storage. Ms. Stowers indicated the only document in Pride's
17 possession that responsive to Petitioner's request was the minutes from the October 10,
18 2017 Association meeting.

19 14. Ms. Stowers stated that Respondent was intending to repair the stucco and
20 paint all exterior walls in the property in calendar year 2018 at a total cost of \$46,000.00.
21 Because Respondent was underfunded, a special assessment was being considered to
22 pay for the work. Ms. Stowers also testified that on March 27, 2018, she inspected
23 Petitioner's home and took photographs. While Ms. Stowers noted a missing area of
24 stucco on the front of the garage that needed to be repaired, but denied being able to
25 identify a crack in the stucco anywhere else on the front of the house.

26 15. Frank Peake, Owner of Pride, testified that Respondent attempted to
27 terminate its contract with The Management Trust because it was not performing its duties
28 properly, but The Management Company refused to acknowledge the termination and
29 held Respondent to the full two year contract. Once the two year period expired,
30 Respondent ended its relationship with The Management Company and engaged Pride.
Mr. Peake stated that it was frustrating trying to figure out what documents Petitioner was

1 requesting. Further, Mr. Peake stated that Pride had not seen the communication
2 regarding the alleged damage until the time of the hearing. Mr. Peake testified that Pride
3 had been trying to put together the association's history from the sparse documents
4 provided by The Management Trust. Mr. Peake also indicated that meeting notices are
5 not normally maintained by the Association. Mr. Peake further testified that Petitioner's
6 request for the minutes of meetings "where the rules and regulations were discussed" was
7 unclear because rules and regulations are discussed in some form at virtually every
8 meeting of the association.

9 **CONCLUSIONS OF LAW**

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

12 2. In this proceeding, Petitioner bears the burden of proving by a
13 preponderance of the evidence that Respondent violated the community CC&Rs and
14 A.R.S. § 33-1805(A). A.A.C. R2-19-119.

15 3. A preponderance of the evidence is "[t]he greater weight of the evidence, not
16 necessarily established by the greater number of witnesses testifying to a fact but by
17 evidence that has the most convincing force." BLACK'S LAW DICTIONARY 1220 (8th ed. 2004).

18 **18F-H1818025-REL**

19 4. The CC&Rs, as amended, provide that Respondent is responsible for the
20 painting and maintenance of the exterior walls of all units.

21 5. The black and white photographs submitted at hearing did not clearly show
22 the crack Petitioner alleged existed on the exterior wall of his unit that required repair. The
23 Administrative Law Judge was unable to identify the location or severity of the alleged
24 crack, and therefore, cannot conclude that such a crack exists and/or that it is necessary
25 to be repaired immediately.

26 6. Thus, Petitioner failed to present evidence sufficient to establish by a
27 preponderance of the evidence that there was a maintenance issue with the exterior wall
28 of his unit that needed to be addressed by Respondent.

29 7. Because Petitioner failed to meet his burden, it is unnecessary to address
30 whether Respondent's plan to perform repairs and painting of the community in 2018 is an
acceptable delay to Petitioner's requested repair.

18F-H1818027-REL

8. A.R.S. § 33-1805(A) provides, in pertinent part, as follows:

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

9. Petitioner clearly made a request for documents in his December 22, 2017 fax to Respondent although the request was somewhat vague. Respondent's former management company failed to properly respond to the request in a timely fashion as required by the applicable statute.

10. The Management Trust should have responded or requested additional clarification of what documents Petitioner was requesting as it was the management company during the ten day window Respondent had to respond pursuant to the statute.

11. Thus, Petitioner established by a preponderance of the evidence that Respondent violated A.R.S. § 33-1805(A).

ORDER

In view of the foregoing, it is ORDERED that Petitioner's petition in Case Number 18F-H1818025-REL is denied.

It is further ORDERED that Petitioner be deemed the prevailing party in Case Number 18F-H1818027-REL.

It is further ORDERED that Respondent comply with the applicable provisions of A.R.S. § 33-1805(A) in the future.

It is further ORDERED that Respondent pay Petitioner his filing fee of \$500.00, to be paid directly to Petitioner within thirty (30) days of this Order.

Pursuant to A.R.S. § 32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04 based on a petition setting forth the

1 reasons for the request for rehearing, in which case the order issued at the conclusion of
2 the rehearing would be binding on the parties.

3 Done this day, April 24, 2018

4 /s/ Tammy L. Eigenheer
5 Administrative Law Judge
6

7
8 Transmitted by either mail, e-mail, or facsimile **April 24, 2018** to:

9 Judy Lowe, Commissioner
10 Arizona Department of Real Estate
11 2910 North 44th Street, Room 100
12 Phoenix, AZ 85018

13 Attn:

14 jlowe@azre.gov

15 LDettorre@azre.gov

16 AHansen@azre.gov

17 djones@azre.gov

18 DGardner@azre.gov

19 ncano@azre.gov

20 Rex E Duffett

21 792 W El Monte Pl., Unit #5

22 Chandler, AZ 85225

23 Nathan Tennyson

24 BROWN/OLCOTT, PLLC

25 373 S. Main Ave.

26 Tucson, AZ 85701

27 Nathan Tennyson

28 BROWN/OLCOTT, PLLC

29 5201 N. 7th Ave

30 Phoenix, AZ 85013

nathant@azhoalaw.net

By F. Del Sol