

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Michelle Ruffo,

4 Petitioner,

5 vs.

6 Reflections in the Catalinas Condo
7 Association,

8 Respondent.

No. 18F-H1818044-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 **HEARING:** September 18, 2018, at 9:00 a.m.

11 **APPEARANCES:** Michelle Ruffo ("Petitioner") appeared on her own behalf;
12 Reflections in the Catalinas Condo Association was represented by Nathan Tennyson,
13 Esq., Brown Olcott, PLLC.

14 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

15
16 **FINDINGS OF FACT**

17 **BACKGROUND AND PROCEDURE**

18 1. The Arizona Department of Real Estate ("the Department") is authorized by
19 statute to receive and to decide Petitions for Hearings from members of condominium
20 unit owners' associations and from unit owners' associations in Arizona.

21 2. Respondent is a condominium unit owners' association whose members own
22 condominiums in the Reflections in the Catalinas condominium development.

23 3. Petitioner owns condominium unit 52 in the Reflections in the Catalinas and is
24 a member of Respondent. The parking space assigned to unit 52 is space 131.

25 4. On or about April 17, 2018, Petitioner filed a single-issue petition with the
26 Department that alleged that Respondent had violated its Covenants, Conditions, and
27 Restrictions ("CC&Rs") §§ 1.36 and 1.38 and A.R.S. §§ 33-1242, 33-1248, 33-1803(A)
28 and (B), and 33-1805 by imposing fines against her for parking in spaces that were not
29 assigned to her unit 52.
30

5. Respondent filed a written answer to the petition, denying that it had violated any CC&Rs or statutes in imposing the parking fines against Petitioner. The Department referred the petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

6. A hearing was held on September 18, 2018. Petitioner submitted six exhibits, testified on her own behalf, and presented the testimony of Carol Lundberg, who lives in unit 45 at the Reflections in the Catalinas. Respondent submitted eight exhibits and presented the telephonic testimony of its property managers, Gabino Trejo, the current manager, and Vanessa Chapman Lubinsky, the former manager. Because Mrs. Lubinsky had gotten married and changed her name after she left Respondent's employment, she will be referred to in this decision by her maiden name of "Ms. Chapman" for consistency with the record.

HEARING EVIDENCE

7. Ms. Chapman was the property manager at the Reflections in the Catalinas between 2012 and early 2018 when she worked for property management company Associa Property Management Services (“Associa”).

8. Petitioner testified that she purchased her unit 52 in 2005, and since that time, she has been parking in spaces 38 and 40 that were assigned to other units with written permission.

9. On or about August 2, 2016, Ms. Chapman on behalf of Respondent sent a “Friendly Reminder” to Petitioner on Associa’s letterhead, stating in relevant part as follows:

It has been brought to our attention that you are currently parking in space #40. Your assigned space is #131. Please discontinue parking in space #40 and park in your assigned space #131. Thank you for your attention to this matter.

Any further correspondence on this matter will be sent to you via certified mail at your expense. If you have any questions or you feel you have received this notice in error, please do not hesitate to call We look forward to discussing any information that may help to quickly resolve this situation.¹

¹ Respondent's Exhibit 6 at 1.

1 10. Ms. Chapman testified that the catalyst for the notice was that Associa had
2 been contacted by a unit owner who complained that Petitioner was parking in a space
3 assigned to the owner's unit and requesting that Associa verify the spaces that were
4 assigned to units.

5 11. On or about August 5, 2016, Associa on behalf of Respondent sent a
6 "Notice of Violation" to Petitioner, stating in relevant part as follows:

7 Prior communication has been sent advising you to park in
8 your assigned parking space. An inspection on August 5,
9 2016 indicates you are still parked in space 40 which does
10 not belong to your unit. Your assigned space is #131.
11 Please discontinue parking in space #40 and park in you
12 assigned space #131 immediately upon receipt of this
13 notice. The Association has an unauthorized parking policy
14 of which after third notice, will relocate a vehicle in violation
15 at the owner's expense. Please be advised that this is your
16 second warning and it is in your best interest to cooperate.²

17 12. On March 14, 2017, Ms. Chapman on behalf of Respondent sent a "Final
18 Non-Compliance Notice" to Petitioner on Associa's letterhead, stating in relevant part as
19 follows:

20 After multiple communication has been sent advising you to
21 park in your assigned parking space, it was noted that again
22 on August 4, 2016 you were parked in space 40 which does
23 not belong to your unit. **On recent visits to the property,**
24 **the week of March 6, 2017, it was noted that you were**
25 **parked in space #38 which has been verified by the**
26 **owner that they have not given you permission to do so.**
27 Your assigned space is #131. Please discontinue parking in
28 space #38 and park in your assigned space #131
29 immediately upon receipt of this notice. . . . Please be
30 advised that this is your final warning and it is in your best
interest to cooperate otherwise fines may be added to your
account. . . .

 If you do not correct your violation within 14 days of
the date of this letter, the Association is entitled to impose a
fine. Before any fine is imposed to your account for the
violation, you are entitled to attend a Hearing with the Board

² Respondent's Exhibit 6 at 2.

of Directors at which you may present statements or witnesses on your own behalf.

. . . .

If the violation is not corrected within 14 days of the date of this letter, and if no request for a Hearing is received as noted above, an initial fine will be assessed to your account. Additional escalating fines will continue to be assessed as long as the violation remains unresolved, or if it is resolved and reoccurs within 90 days of resolution. . . .³

13. Ms. Chapman testified that the owner at the time of the unit to which space #38 was assigned, John Pohlig, communicated to her via email that his tenants said that notes were being left on their vehicle that was parked in their assigned space. Ms. Chapman testified that Mr. Pohlig informed her that he had not given Petitioner permission to park in space #38. Ms. Chapman testified that Petitioner then involved Mr. Pohlig's tenant, Julie Ruiz, in Petitioner's dispute with Respondent.

14. Ms. Chapman testified that Petitioner did not request a hearing within 14 days of Associa's March 14, 2017 letter. Ms. Chapman noted that as of March 14, 2017, no parking fines had been assessed against Petitioner for parking in other unit owners' assigned spaces.

15. On March 30, 2017, Ms. Chapman on Respondent's behalf sent a letter on Associa's letterhead to Petitioner, informing her that because her vehicle had been observed in space #38 during the week of March 29, 2017, Respondent was assessing a \$50.00 fine against her account.⁴

16. On or about April 17, 2017, Petitioner responded to Ms. Chapman's March 30, 2017 letter, in relevant part as follows:

For many years property owners at Reflections have been having to deal with a disorganized system of parking spaces.

For example unit #56 & #52. The Morley's and Ruffo. Ms. Morley & I agreed in writing to switch space #40 for Space #131. A letter was submitted to Lewis Management (several times) as well as Associa. The original letter was dated November 2006. There were never any issues until recently

³ *Id.* at 3.

⁴ *Id.* at 5.

1 when some renters came into the unit. Next thing I know the
2 Associa property manager for Reflections informed me that
3 the original owners sold #56 & new owners took over.
4 According to the Pima County Assessors office, the Morley's
5 (original owners) still own this property & have since the
6 parking space exchange in 2006. I have been acting in good
7 faith & not violating the "rules".

8
9 Due to my recent injuries, I asked the folks staying in unit
10 #53 if they would mind me parking in #38. They gave me
11 permission to park there, which I am doing on occasion.

12 I find this issue of parking rather complex. My parking space
13 has been occupied numerous time with different vehicles.
14 But I don't get upset. At no time was I willfully violating
15 parking rules. In fact I was showing due diligence in gaining
16 permission from appropriate people. Considering the point
17 expressed above I feel this fine should be waived.⁵

18 17. On April 27, 2017, Ms. Chapman sent Petitioner a letter, informing her that
19 her April 17, 2017 letter had been received and shared with Respondent's Board. Ms.
20 Chapman invited Petitioner to address the Board in a closed session that was
21 scheduled that evening, but informed her that, although the Board would listen to
22 Petitioner's case, it would not deliberate in front of her.⁶

23 18. Ms. Chapman testified that she presented Petitioner's April 17, 2017 request
24 that the parking fine be waived to Respondent's Board, but that based on its review, the
25 Board determined that the fine was valid and that there was no basis to rescind it.
26 Petitioner did not attend or address the Board at the April 27, 2017 Board meeting.

27 19. On May 1, 2017, Ms. Chapman sent another email to Petitioner, in relevant
28 part as follows:

29 The board discussed your fine waiver request in the closed
30 session. Section 4.7 is clear that each unit owner is to park
in their assigned space. The Association cannot enforce
anything other than that. Agreements between parties [are]
not legally binding or enforceable. The board has a duty to
uphold the CC&R for the benefit of all 136 unit owners.

⁵ *Id.* at 6.

⁶ *See id.* at 7.

1 The request for the fine waiver has been denied for the
2 reasons above. Please be advised that if you are not
3 parking in your assigned space, fines will continue to be
4 assessed to your account.

5 In addition, any unpaid fines may result in denied access to
6 the amenities of the Association (pool/fitness room).⁷

7 20. Petitioner testified that she paid the \$50.00 fine. She acknowledged that
8 she did not pay any subsequently assessed parking fines.

9 21. Ms. Chapman testified that she continued to observe Petitioner parking her
10 vehicle in spaces that were not assigned to her unit #52.

11 22. On June 6, 2017, Ms. Chapman on behalf of Respondent, sent a letter
12 informing Petitioner that on recent visits to the property during the week of May 29,
13 2017, Petitioner's vehicle had been observed parked in space #40. The owners of the
14 unit to which space #40 was assigned verified that they had not given Petitioner
15 permission to park in space #40. Respondent was advised that Respondent had placed
16 a \$200.00 fine on Petitioner's account for the violation.⁸

17 23. Ms. Chapman explained that Respondent had assessed a \$100.00 fine for
18 each of the two times that Petitioner's vehicle was observed in a space that was not
19 assigned to her unit #52.

20 24. On June 26, 2017, Ms. Chapman on behalf of Respondent sent another
21 letter to Petitioner, informing her that "[i]t was noted by the community manager that you
22 were parked in space #40 and #38 on the days of June 15th – June 18th, 2017." The
23 letter asked Petitioner to discontinue parking in spaces #40 and #38 and assessed
24 another \$200.00 fine, for a total of \$400.00.⁹

25 25. On July 11, 2017, Respondent sent another letter to Petitioner, this one via
26 certified mail, informing her that she had unpaid fines on her account and that if the
27 fines were not paid within 30 days, Petitioner's access to the pool and fitness room
28 would be denied.¹⁰

29 ⁷ *Id.* at 8.

⁸ *See id.* at 9.

⁹ *See id.* at 10.

¹⁰ *See id.* at 11.

1 26. Ms. Chapman testified that after Petitioner did not pay the outstanding fines
2 within 30 days of the July 11, 2017 letter, Respondent shut off Petitioner's electric-key
3 access to the pool and fitness center for the community.

4 27. Sometime after August 7, 2017, Ms. Chapman received a letter from Mark F.
5 Williman, Esq., informing her that Petitioner had retained his services to help her
6 resolve her issues with Respondent's Board and that he understood that the Board's
7 next meeting was scheduled on August 24, 2017, and that the Board would address
8 Petitioner's concerns in an executive session.¹¹

9 28. Petitioner testified that Mr. Williman was a friend of hers who had agreed to
10 help her as a personal favor.

11 29. On August 9, 2017, Ms. Chapman sent another letter to Petitioner, informing
12 her that the community manager had observed Petitioner's vehicle parked in space #40
13 and requesting that she park in her assigned space #131. Respondent assessed
14 another \$200.00 in fines, \$100.00 for each observed violation.¹²

15 30. The August 24, 2017 Board meeting was rescheduled to August 31, 2017.
16 Ms. Chapman testified that she contacted Mr. Williman and that he confirmed that he
17 would attend the August 31, 2017 meeting on Petitioner's behalf. Respondent asked its
18 attorney to also attend the August 31, 2017 meeting.

19 31. Respondent submitted an email chain between Petitioner and Mr. Williman.
20 On August 30, 2017, Petitioner sent a text to Mr. Williman, informing him that there was
21 a Board meeting on the next day and that she was out of town. Mr. Williman assured
22 Petitioner that he would go to the Board meeting in her place. On September 1, 2017,
23 Petitioner asked Mr. Williman how the Board meeting had gone. Mr. Williman
24 responded that, after thinking about it, he decided that he would not attend the Board
25 meeting without Petitioner because all he could do would to be the Board's "messenger"
26 and attorneys "loathe going to court for 'in absencia' hearings – you become a dart
27 board without recourse."¹³

28
29 ¹¹ See *id.* at 12.

30 ¹² See *id.* at 13.

¹³ *Id.* at 14.

1 32. Ms. Chapman testified that she went to the Board's meeting on August 31,
2 2017. A few minutes before the scheduled meeting, while she, the Board, and
3 Respondent's attorney were waiting for Petitioner and Mr. Williman, she checked her
4 phone and saw a message from Mr. Williman, stating that he would not attend the
5 meeting and that Petitioner also would not attend the meeting because she was
6 working. Ms. Chapman testified that Respondent's attorney charged it \$200.00 for the
7 time spent on the aborted meeting.

8 33. On September 25, 2017, Ms. Chapman on behalf of Respondent sent
9 another letter to Petitioner, informing her that "[m]ultiple inspections and witness
10 accounts within the past two weeks indicate that you continue to violate the parking
11 assignments as you continually park in other unit's reserved parking spaces as well as
12 visitor spaces instead of your space 131." As a result, a total of \$1,400.00 had been
13 assessed against Petitioner's account, \$100.00 for each observation.¹⁴

14 34. On or about October 2, 2017, Petitioner hand-delivered a hand-written letter
15 to Ms. Chapman, stating that "[t]his is a written request (3rd) to ask for hearing of fines
16 that are brought up at me."¹⁵ On that same date, Petitioner made a written request to
17 view her personal file and any videos or photographs in the file.¹⁶

18 35. On October 4, 2017, Respondent's attorney, Jonathan Olcott, Esq., wrote a
19 letter to Mr. Williman, stating that Respondent's Board "decline[d] to schedule another
20 hearing for [Petitioner] until she reimburse[d] the Association \$200.00" for Mr. Olcott's
21 charges for the August 31, 2017 meeting that Mr. Williman and Petitioner failed to
22 attend, without notice.¹⁷

23 36. On October 9, 2017, Petitioner wrote a letter to Respondent, care of
24 Associa, requesting that it dismiss all fines that had been assessed against her because
25 she had written permission since 2006 to park in space #40 assigned to unit #56 from
26 the Morleys and that according to the Pima County Assessor, the Morleys still owned
27
28

29 ¹⁴ See *id.* at 15.

¹⁵ *Id.* at 16.

¹⁶ See *id.* at 17.

¹⁷ See *id.* at 18.

1 unit #56. Petitioner stated that no one had a problem with her parking in space #40 until
2 2016.¹⁸

3 37. On October 17, 2017, Ms. Chapman on behalf of Respondent informed
4 Petitioner that “[i]nspections conducted on October 6, 2017 indicate that you continue to
5 violate the parking assignments as you continually park in other unit’s reserved parking
6 spaces as well as visitor spaces instead of your space 131.” As a result, an additional
7 fine of \$100.00 had been assessed against Petitioner’s account.¹⁹

8 38. Ms. Chapman testified that the October 17, 2017 violation had been
9 witnessed by one of Respondent’s Board members. In addition, she conducted regular
10 inspections of the property and had personally witnessed all charged violations.

11 39. At some point after October 24, 2017, Respondent and Associa received a
12 letter from attorney Eric J. Thomae, Esq., that provided in relevant part as follows:

13 Be advised that our office has been retained by [Petitioner].
14 We have reviewed [Petitioner’s] association file and the
15 correspondence she has received from the association. It is
16 our belief that [Petitioner] has been unlawfully discriminated
17 against and harassed in retaliation for her role related to
18 allegations that HOA President Mitch Treese
19 misappropriated HOA funds.

20 As you know, [Petitioner] was a proud board member who
21 was removed from the board [a]s a result of allegations
22 made against Mr. Treese. Despite Mr. Treese’s admission,
23 [Petitioner] immediately began being accused of violating the
24 association’s [CC&Rs]. The harassment continued with
25 numerous citations and outrageous fines in violation of
26 A.R.S. § 33-1803(B).²⁰

27 Petitioner did not submit any evidence at the hearing that Mitch Treese had
28 misappropriated Respondent’s funds or that she had called the misappropriation to
29 Respondent’s or any law enforcement entity’s attention. Petitioner did not allege or
30 present evidence that anyone else in the association was parking in spaces that had not
been assigned to his or her unit.

¹⁸ See *id.* at 19.

¹⁹ *Id.* at 21.

²⁰ *Id.* at 22.

1 40. On November 6, 2017, Ms. Chapman on behalf of Respondent sent another
2 letter to Petitioner, informing her that “[i]nspections conducted on November 5, 2017
3 indicate that you continue to violate the parking assignments as you continually park in
4 other unit’s reserved parking spaces as well as visitor spaces instead of your space
5 131.” As a result, an additional fine of \$100.00 had been assessed against Petitioner’s
6 account.²¹

7 41. On November 6, 2017, Mr. Olcott sent a letter to Mr. Thomae, informing him
8 that Petitioner had been afforded a hearing on August 31, 2017, but that her attorney at
9 the time, after promising to attend the Board meeting, had texted Respondent at 7:10
10 p.m. that he and Petitioner were cancelling. Mr. Olcott explained that he had billed
11 Respondent \$200.00 for the meeting and that after Petitioner reimbursed Respondent
12 \$200.00, Respondent would schedule another meeting.²²

13 42. On December 8, 2017, Petitioner sent a letter to Respondent and Ms.
14 Chapman, stating that she never signed a contract agreeing to pay any fees, that she
15 was never informed that Mr. Olcott would attend the August 31, 2017 Board meeting,
16 that Mr. Olcott was on retainer, and that nothing in the CC&Rs required Respondent’s
17 members to pay anything to have a hearing.²³

18 43. On December 12, 2017, Petitioner sent another letter to Respondent and
19 Ms. Chapman, stating that her file contained only letters and asking how she could have
20 been fined \$1,400.00, as stated in Respondent’s September 25, 2017 letter, when her
21 file did not include any photographs or videos of the charged parking violations.²⁴

22 44. On January 18, 2018, Petitioner sent another letter to Respondent and Ms.
23 Chapman, again saying that she wanted a hearing to protest the “outrageous fines” that
24 had been charged against her account and that A.R.S. § 33-1803(A) did not allow
25 Respondent to require her to reimburse its attorney’s fees as a condition of scheduling a
26 hearing.²⁵

28 ²¹ *Id.* at 24.

29 ²² *See id.* at 25.

30 ²³ *See id.* at 26.

²⁴ *See id.* at 27.

²⁵ *See id.* at 28.

1 45. Petitioner did not deny that she had been parking in space #38 and #40 and
2 visitor spaces. Petitioner submitted photographs showing others' vehicles parked in
3 space #131 that was assigned to her unit #52, including maintenance vehicles bearing
4 Associa's logo and a landscaping contractor's vehicle.²⁶ Petitioner testified that the
5 dates that were printed or typed on the photographs were the dates that the
6 photographs were taken, as follows:

- 7 45.1 February 24, 2017 (Associa maintenance vehicle);
- 8 45.2 March 3, 2017 (Associa maintenance vehicle);
- 9 45.3 Date not shown (Toyota 4Runner, Arizona License Plate AVK0432);
- 10 45.4 March 12, 2017 (Associa maintenance vehicle)
- 11 45.5 March 13, 2017 (Associa maintenance vehicle)
- 12 45.6 March 15, 2017 (Associa maintenance vehicle)
- 13 45.7 March 20, 2017 (Associa maintenance vehicle)
- 14 45.8 March 27, 2017 (Associa maintenance vehicle)
- 15 45.9 March 29, 2017 (Associa maintenance vehicle)
- 16 45.10 March 30, 2017 (Associa maintenance vehicle)
- 17 45.11 Undated (Honda sedan, model and license number illegible);
- 18 45.12 Undated (parking space, model, and license number illegible);
- 19 45.13 April 1, 2017 (Hyundai Santa Fe, Arizona License Plate BXF5316)
- 20 45.14 April 6, 2017 (Northwest Landscaping truck and trailer, parked across 8-10
21 spaces);
- 22 45.15 June 22, 2017 (Northwest Landscaping truck and trailer, parked across
23 multiple unmarked parking spaces);
- 24 45.16 July 20, 2017 (Northwest Landscaping truck and trailer, parked across
25 multiple unmarked parking spaces and blocking in red SUV);
- 26 45.17 October 2016 (white pickup truck; model and license plate number
27 unknown); and
- 28 45.18 Undated (grey sedan and model, license plate number unknown).

29
30

²⁶ See Petitioner's Exhibit MR(B) at 30-37.

1 Petitioner also submitted a photograph dated October 6, 2017, showing herself and her
2 red SUV in an unknown parking space.

3 46. Petitioner testified that she complained to a board member about other
4 vehicles parking in space 131. Petitioner acknowledged that she never complained or
5 presented any evidence to the property manager, to Respondent's full board at a public
6 meeting, or in a writing addressed to Respondent's board or property manager about
7 other vehicles parking in space 131, other than writing the April 17, 2017 letter quoted at
8 Finding of Fact No. 16 above. Petitioner also acknowledged that she had never sent
9 Respondent a certified letter to protest the parking fines that it had assessed against
10 her.

11 47. Petitioner submitted an email from Julie Ruiz, the tenant in Mr. Pohlig's unit,
12 dated September 14, 2018, stating that she had given Petitioner permission to park in
13 the parking space assigned to the unit that she was renting because Petitioner worked
14 late at night. Ms. Ruiz stated that she parks closer to her rented unit in a designated
15 visitor parking space.²⁷ Petitioner did not submit any writing from the Morleys, the
16 alleged prior owners of unit 56, giving her the right to park in their assigned space #40.

17 48. Ms. Chapman testified that over time, Petitioner's parking violations
18 escalated and that she never stopped parking in other units' assigned spaces or in
19 visitor spaces.

20 49. Ms. Chapman testified that she heard about Associa's vehicles parking in
21 Petitioner's space #131. In early 2017, she had a conversation with the maintenance
22 crew and instructed them to park in visitors' spots. To her knowledge, the Associa's
23 maintenance and landscape vehicles no longer park in Petitioner's assigned space
24 #131.

25 50. Petitioner asked Ms. Chapman whether Respondent's Board had recently
26 renumbered all the parking spaces because unit owners were all confused about the
27 location of their assigned parking spaces. Ms. Chapman denied that there was
28 widespread confusion or that the parking spaces had been renumbered. Ms. Chapman
29

30 ²⁷ See Complainant's Exhibit MR(E).

1 explained that Respondent reproduced a digital plat of the parking spaces that
2 contained a typo that needed to be corrected.

3 51. Mr. Trejo is the current property manager employed by Associa at
4 Reflections in the Catalinas Condominiums. Mr. Trejo established foundation for
5 CC&Rs and regulations are relevant to the parties' dispute.

6 52. Section 1.36 of Respondent's CC&Rs provides as follows:

7 **"Parking Space"** means a portion of the Limited Common
8 Elements intended for the parking of a single motor vehicle
9 and identified on the Plat as a parking space, including those
10 Parking Spaces to be allocated by the Declarant or the
11 Association to Unit Owners, and also the portion of Common
12 Elements for those Parking Spaces that will be designated
13 for the common use of the Unit Owners, their guests,
14 Lessees, and Invitees.²⁸

15 53. Section 1.31 of the CC&Rs provides as follows:

16 **"Limited Common Elements"** means a portion of the
17 Common Elements specifically designated in this
18 Declaration as a Limited Common Element and allocated by
19 this Declaration or by operation of the Condominium Act for
20 the exclusive use of one or more but fewer than all the
21 Units.²⁹

22 54. Section 2.8.1(e) of the CC&Rs provides as follows:

23 Any Parking Space(s) are Limited Common Elements
24 allocated by the Declarant to a Unit Owner for the exclusive
25 use and benefit of that Unit Owner. The specific Parking
26 Space(s) within Common Area are designated on the
27 attached parking map as Schedule 1. . . .³⁰

28 Attachment A to Schedule 1 to the CC&Rs is entitled "Parking Spaces Allocations" and
29 shows that parking space #131 is assigned to Petitioner's unit 52, parking spaces #40
30 and #203 are assigned to unit #56, which Petitioner testified was at one time owned by
the Morleys, and parking spaces #38 and #204 were assigned to unit #53, which Ms.
Chapman testified was owned by Mr. Pohlig.³¹

28 Respondent's Exhibit 1 at 5.

29 *Id.*

30 *Id.* at 10.

31 One parking space was allocated to the 968 square foot one-bedroom units, like Petitioner's, and two parking spaces were allocated to the 1,263 square foot two-bedroom units, like units #56 and #53.

1 55. Section 2.8.3 of the CC&Rs provides as follows:

2 A Limited Common Element may be reallocated by an
3 amendment to this Declaration. The amendment shall be
4 executed by the Owners between or among whose Units the
5 allocation is made, shall state the manner in which the
6 Limited Common Elements are to be reallocated and, before
7 recording the amendment, shall be submitted to the Board of
8 Directors. Unless the Board of Directors determines within
9 thirty (30) day that the proposed amendment is
10 unreasonable, which determination shall be in writing and
11 specifically state the reasons for disapproval, the Association
12 shall execute its approval and record the amendment.³²

13 Mr. Trejo testified that under Section 2.8.3, only an owner, not a tenant, can agree to
14 reallocate assigned parking spaces and the reallocation must be in writing and
15 submitted to the Board. Petitioner did not follow this procedure to parking in spaces #38
16 and #40.

17 56. Section 4.7 of the CC&Rs provides in relevant part as follows:

18 **Motor Vehicles.** . . . If a Parking Space is assigned to a Unit
19 as a Limited Common Element, then no Owner, Lessee or
20 Occupant may park any automobile, motorcycle, motorbike
21 or other motor vehicle owned or leased by such Unit Owner,
22 Lessee or Occupant in any Parking Spaces other than the
23 Parking Space assigned to the Unit as a Limited Common
24 Element.³³

25 57. Section 13.1(a) of the CC&Rs concerns enforcement and allows
26 Respondent to enforce the CC&Rs by imposing monetary penalties after notice and an
27 opportunity to be heard. Section 13.1(c) allows Respondent to suspend a unit owner's
28 right to use facilities as a penalty. Section 13.1(h) gives Respondent the right to tow
29 vehicles that are parked in violation of the CC&Rs or the rules.³⁴

30 58. Section 13.6 of the CC&Rs provides that Respondent must provide notice
31 to unit owners in writing through personal delivery or first class mail.³⁵ Complainant did

32 *Id.*

33 *Id.* at 22.

34 *Id.* at 49-50.

35 *See id.* at 52.

1 not dispute that she received all the notices of violations that Respondent sent to her
2 and she included many of the notices in her own exhibits.

3 59. Respondent's current Rules and Regulations provide for Unit Owner
4 Parking, in relevant part as follows:

5 Each Unit is assigned specific parking space(s). If someone
6 parks in a Unit Owner's assigned space, the Unit Owner may
7 request that the Manager cause such vehicle to be towed
8 away. . . .³⁶

9 60. On September 27, 2017, pursuant to this regulation, Respondent
10 attempted to have Petitioner's vehicle towed from the space in which she had parked it
11 because the space was not assigned to her Unit 52. Petitioner was in and refused to
12 leave her vehicle when the tow truck driver arrived and started hooking up her vehicle to
13 the tow truck. Petitioner called the Pima County Sheriff's Office and told the responding
14 officer that she was doing nothing wrong parking in a visitor's space and that
15 Respondent was attempting to have her car towed with her in it because it did not like
16 her. The responding officer told the tow truck driver to remove the tow equipment and
17 try another time.³⁷

18 61. Respondent's Violation Enforcement Policy allows an association manager
19 who observes a violation of the CC&Rs or rules and regulations to send a "Friendly
20 Reminder," followed by a Notice of Violation if the violation is not corrected.
21 Respondent must consider the seriousness of the violation and whether it is a
22 continuing violation in assessing the amount of the penalty.³⁸

23 62. The Violation Enforcement Policy also provides that if a request for hearing
24 is submitted with 14 days of the notice of violation, a hearing must be scheduled and the
25 unit owner must be afforded a reasonable opportunity to be heard.³⁹

26 63. The current balance of unpaid parking fines on Petitioner's account on the
27 date of the hearing, including interest and certified letter fees, is \$2,544.00.⁴⁰

28 ³⁶ Respondent's Exhibit 2 at 1.

29 ³⁷ See Respondent's Exhibit 8 at 22.

30 ³⁸ See Respondent's Exhibit 3 at 1-2.

³⁹ See *id.* at 1.

⁴⁰ See Respondent's Exhibit 7.

64. Neither the CC&Rs, the Rules and Regulations, nor the Violation Enforcement Policy address whether a unit owner may be liable for unnecessary attorney's fees that she causes the Association to incur.

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(1) permits a condominium unit owner to file a petition with the Department for a hearing concerning the condominium association's alleged violations of the Condominium Act set forth in Title 33, Chapter 9. This matter lies within the Department's jurisdiction.

2. Petitioner bears the burden of proof to establish that Respondent violated the CC&Rs and statutes cited on her petition by a preponderance of the evidence.⁴¹ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁴²

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁴³ A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁴⁴

4. Petitioner argued repeatedly at the hearing that Respondent's notices of her parking violations violated A.R.S. § 33-1242(C) and her right to due process because the notices did not inform her who had observed the violation or provide a photograph or video of her car parked in a space that had not been assigned to her unit #52. A.R.S. § 33-1242 provides in relevant part as follows:

B. A unit owner who receives a written notice that ***the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents*** without regard to whether a monetary penalty is imposed by the notice may provide the association with a

⁴¹ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴² See A.A.C. R2-19-119(B)(2).

⁴³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴⁴ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 written response by sending the response by ***certified mail***
2 within twenty-one calendar days after the date of the notice.
3 The response shall be sent to the address identified in the
4 notice.

5 ***C. Within ten business days after receipt of the certified***
6 ***mail containing the response from the unit owner***, the
7 association shall respond to the unit owner with a written
8 explanation regarding the notice that shall provide at least
9 the following information unless previously provided in the
10 notice of violation:

- 11 1. The provision of the condominium documents that has
12 allegedly been violated.
- 13 2. The date of the violation or the date the violation was
14 observed.
- 15 3. The first and last name of the person or persons who
16 observed the violation.
- 17 4. The process the unit owner must follow to contest the
18 notice.

19 (Emphasis added.)

20 5. In construing or interpreting a statute, the Administrative Law Judge must
21 follow certain principles, to wit:

22 The cardinal principle of statutory interpretation is that we
23 must follow the plain and natural meaning of the statute to
24 determine what the legislature intended. . . . Words and
25 phrases in statutes will be given their ordinary meaning
26 unless it appears from the context or otherwise that a
27 different meaning is intended. . . .⁴⁵

28 The notices of violation that Respondent sent to Petitioner concerned her use of parking
29 spaces, which CC&R § 1.36 defines as limited common elements. Petitioner did not
30 dispute that that the unit she owned, #52, was assigned parking space #131, a limited
common element, and that she routinely parked in other parking spaces that were not

⁴⁵ *Ring v. Taylor*, 141 Ariz. 56, 70, 685 P.2d 121, 135 (App. 1984) (citations omitted); see also *Westburne Supply, Inc. v. Diversified Design and Construction, Inc.*, 170 Ariz. 598, 600, 826 P.2d 1224, 1226 (App. 1992) ("A cardinal rule of statutory interpretation is to give full effect to each statutory word or phrase so that no part is rendered void, superfluous, contradictory or insignificant.").

1 assigned to the unit that she owned. Respondent's notices of violations did not concern
2 the condition of Petitioner's unit #52, which she owned, but her repeated decisions to
3 use limited common elements that she did not own and that were not assigned to her
4 unit in Respondent's documents or records. Petitioner never sent a certified letter to
5 Respondent to protest any of its notices of violations about her use of limited common
6 elements that were not assigned to her unit #52. A.R.S. § 33-1242(B) and (C) do not
7 apply to this dispute.

8 6. Many of Respondent's notices of violation identified the source of the
9 complaint as the property manager or another unit owner. Ms. Chapman credibly
10 testified that she personally observed all of the parking violations. Petitioner did not
11 dispute that she routinely parked in space #38 or #40 or designated visitor's spaces,
12 instead arguing that she has been doing so since she purchased her condominium and
13 that she had a right to continue parking in spaces other than her allocated space #131.

14 7. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give
15 effect to the intent of the parties.⁴⁶ "Restrictive covenants must be construed as a whole
16 and interpreted in view of their underlying purposes, giving effect to all provisions
17 contained therein."⁴⁷ .CC&R § 4.7 requires owners and lessees of units to park in their
18 assigned parking spaces. CC&R § 2.8.1(e) assigned space #131 to Petitioner's unit
19 #52, as well as assigning space #40 to unit #56 and space #38 to unit #53. CC&R §
20 2.8.3 requires that unit owners' reallocation of limited common elements, such as
21 parking spaces, to be submitted to the Board for its tacit approval. Petitioner did follow
22 this procedure.

23 8. The consequences of Petitioner's claimed written approval from the Morleys
24 to use space #40 more than a decade ago and written approval from Mr. Pohlig's tenant
25 Ms. Ruiz to use space #38 illustrate the evils that the CC&Rs were designed to prevent.
26 Ms. Chapman credibly testified that the Morleys subsequently sold unit 56 and that
27 tenants complained to their landlords and to Respondent that they were unable to park
28 in their assigned spaces because Petitioner was parked there. Because both Ms. Ruiz

29 ⁴⁶ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

30 ⁴⁷ *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 and Petitioner are currently parking in visitors' spaces, other unit owners' guests'
2 parking options are limited. Because Petitioner never submitted any written agreement
3 with another owner regarding reallocation of parking spaces to Respondent's Board for
4 its tacit approval, as CC&R § 2.8.3 requires, subsequent tenants and owners have no
5 notice of Petitioner's alleged agreements with their predecessors regarding parking
6 spaces. If everyone adopted Petitioner's sense of entitlement as to parking spaces at
7 the Reflections, no one would be able to park their car with any security or plan.

8 9. Petitioner did not present any evidence that her assigned space #131 is
9 inherently undesirable or that she made any effort to report others parking in her
10 assigned space when there was something that the property manager or Respondent
11 could have done about it.

12 10. Respondent followed its enforcement policy. Respondent provided an
13 opportunity for Petitioner to address the Board regarding the notices of violation on April
14 17, 2017, and August 31, 2017. Although Petitioner's failure to appear at the August
15 31, 2017 Board meeting may have been Mr. Milliman's fault,⁴⁸ she does not dispute that
16 neither she nor Mr. Milliman notified the Board before the meeting that they would not
17 attend. Although the CC&Rs and rules and regulations do not provide that Respondent
18 can require a unit owner to pay attorney's fees as a condition for granting a public
19 hearing, A.R.S. § 33-1242(A)(18) allows Respondent to "[e]xercise any . . . powers
20 necessary and proper for the governance and operation of the association." In addition,
21 civil and administrative statutes require the payment of attorney's fees that a party
22 causes her opponent to incur unnecessarily.⁴⁹

23 11. Petitioner had a hearing before the Office of Administrative Hearings. In
24 light of Petitioner's arguments and evidence at the hearing, as discussed above, and
25 continued violation of Respondent's parking policy over nearly two years, despite
26 numerous notices of violations and assessment of fines by Respondent, the

27 ⁴⁸ Petitioner may seek relief from Mr. Milliman or his malpractice insurer for his misrepresentation about
28 his intent to appear at the meeting on her behalf.

29 ⁴⁹ See, e.g., A.R.S. § 12-349(A) (Requiring court to award attorney's fees against a party who brings or
30 defends a claim without substantial justification, who brings or defends a claim solely or primarily for delay
or harassment, or who unreasonably expands or delays the proceeding); A.R.S. § 41-1007(A) requiring an
Administrative Law Judge to award attorney's fees against a government agency if the agency's position
was not substantially justified).

Administrative Law Judge does not believe that any hearing before Respondent's Board would have changed Petitioner's behavior, the parties' course of dealings, or the outcome of this matter.

ORDER

IT IS ORDERED that Petitioner Michelle Ruffo's petition against Respondent Reflections in the Catalinas Condo Association is denied because Petitioner has not established that Respondent violated the CC&Rs or any statute in assessing fines against her for her repeated violations of CC&R § 4.7 by parking in spaces that were not assigned to her unit #52.

NOTICE

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. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

Done this day, October 3, 2018.

/s/ Diane Mihalsky
Administrative Law Judge

Transmitted electronically to:

Judy Lowe, Commissioner
Arizona Department of Real Estate

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By: Felicia Del Sol

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