

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 George E Lord
4 Petitioner,

No. 19F-H1918013-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 The Boulders at La Reserve Condominium
7 Association,
8 Respondent.

9

HEARING: November 26, 2018

10 **APPEARANCES:** Petitioner George E. Lord appeared on his own behalf.
11 Respondent The Boulders at La Reserve Condominium was represented by Maria
12 Kupillas.

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

14

FINDINGS OF FACT

15 **Procedural Background**

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17 1. The Boulders at La Reserve Condominium Association (Respondent or
18 The Boulders) is an association of condominium owners located in Oro Valley, Arizona.

19 2. On or about August 31, 2018, George Lord (Petitioner) filed a petition with
20 the Arizona Department of Real Estate (Department), alleging that Respondent had
21 violated the provisions of A.R.S. § 33-1242, A.R.S. § 33-1260.01, and Respondent's
22 CC&Rs.

23 3. On or about August 31, 2018, the Department issued a notice to
24 Respondent regarding the petition.

25 4. On or about September 25, 2018, Respondent filed an answer to the
26 petition denying all allegations.

27 5. On or about October 1, 2018, the Department issued a Notice of Hearing
28 to the parties notifying them that a hearing on the petition would be conducted by the
29 Office of Administrative Hearings.
30

1 6. On November 26, 2018, a hearing was held on the petition and the parties
2 presented evidence and argument regarding the violation alleged in the petition.

3 **Hearing Evidence**

4 7. Petitioner owned multiple units at The Boulders. On or about December
5 4, 2017, Petitioner, via his management company Stonehouse Group, entered into
6 leases with Barrie Shepley for two units. Each of the leases was for a term from March
7 7, 2018, through April 30, 2018. At that time, Mr. Shepley also entered into a lease
8 agreement on a separate unit not owned by Petitioner. That lease was transferred to a
9 unit owned by Petitioner on or about January 15, 2018.

10 8. Petitioner purportedly forwarded copies of the lease documents to
11 Respondent via the management company, Paul Ash Management. Respondent did
12 not complete a Declaration of Lease/Rental Agreement as required by Respondent prior
13 to the tenancy beginning.

14 9. Mr. Shepley operated a fitness business in Canada called Personal Best,
15 in which he offered fitness training camps in the Tucson, Arizona area. According to the
16 website, there were a total of six camps offered from March 8, 2018, through April 29,
17 2018. All camps included accommodations at The Boulders. The price for each camp
18 depended on the selected living arrangements. With four campers in a condo, the cost
19 was \$950.00 each. With three campers in a condo, the cost was \$1075.00 each. With
20 two campers in a condo, the cost was \$1299.00 each. None of the fitness instruction
21 was to occur on site at The Boulders.

22 10. On or about March 7, 2018, guests of Mr. Shepley began arriving to
23 occupy the three units.

24 11. On or about March 9, 2018, Danielle Morris, Community Manager at The
25 Boulders, emailed Petitioner as follows:

26 I wanted to bring to your attention a potential problem with the renter at
27 these three units. They are all three rented by the same person, Barrie
28 Shepley, who I believe is subleasing your units out to different people in
29 violation of the CC&R's. These subleases are also less than the 30 day
30 minimum timeframe.

 Would you please advise if you are aware of this and what steps you are
taking to correct the violations at your units? Currently, the access cards
for these three units are not active for the reasons stated above.

1 12. After some back and forth email conversations, Petitioner was of the
2 opinion that Mr. Shepley was not subleasing the units, but was merely having guests
3 occupy the units. Petitioner asserted that The Boulders should not withhold amenities
4 without a valid reason. Ms. Morris retorted that Petitioner was required to provide the
5 names of the occupants and the duration of their stay. Ms. Morris also asserted that the
6 occupants had to occupy the unit for a minimum of 30 days.

7 13. On or about March 13, 2018, Petitioner provided the names of the
8 occupants and the dates of their occupancies. Petitioner requested that the amenities
9 be restored for the occupants.

10 14. On or about March 16, 2018, Ms. Morris notified Petitioner that the
11 violation continued as the occupants staying from March 7, 2018, through March 31,
12 2018, were not staying 30 days.

13 15. On or about March 18, 2018, Petitioner received a Notice of Violations for
14 each of the three units. The Notices of Violations were dated March 12, 2018, or March
15 14, 2018, and provided, in relevant part, as follows:

16 It has come to management's attention that this unit is in violation of a
17 provision within the governing documents. Specifically, the Boulder
18 Canyon HOA was not provided the names of the adult occupants residing
19 in the unit or the timeframes of the occupant's stay. Both issues are
violations of the HOA governing documents.

20 For these reason[s], amenity access has been suspended. Access cards
21 will not be activated until the required information is provided to the
22 Boulder Canyon HOA. We ask that you resolve the violations or a fine of
\$300 may be applied to your account pursuant to the Leasing Policy in
place.

23 16. Petitioner, believing he had already provided the necessary information,
24 did not respond to the Notice of Violations.

25 17. On or about March 22, 2018, Petitioner received a letter from counsel for
26 Respondent outlining the legal position of Respondent as it related to the leases and the
27 requirements of the statutes and CC&Rs. The letter indicated Petitioner had an amount
28 due of \$250.00 in fees. Counsel explained in the letter, "As you know, the Association
29 is entitled to recover its costs and attorneys' fees from you, including \$250.00 already
30 incurred for the preparation of this letter."

18. On or about April 2, 2018, Mr. Shepley cancelled the remainder of the leases due to the lack of amenities for the occupants. Petitioner asserted that he lost a total of \$6900.00 in rental fees for April 2018 as a result of Mr. Shepley's cancellations.

CONCLUSIONS OF LAW

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

2. In this proceeding, Petitioner bear the burden of proving by a preponderance of the evidence that Respondent violated A.R.S. § 33-1258. 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. 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 written response by sending the response by certified mail within twenty-one calendar days after the date of the notice. The response shall be sent to the address identified in the notice.

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

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

5. Petitioner alleged that Respondent's failure to include in the Notices of Violations a citation to the statute or CC&Rs that had been violated was a violation of A.R.S. § 33-1242.

6. A.R.S. § 33-1242(B) includes no requirement that the initial written notice of a violation include a citation to the specific statute or CC&R to have been violated. While A.R.S. § 33-1242(C) does require that the association include the "provision of

1 the condominium documents that has allegedly been violated,” such a requirement is
2 only imposed after an initial notice and a written response by certified mail from the
3 homeowner. In this matter, Petitioner was clear that he did not respond to the Notices
4 of Violations because he believed he had already provided the information required by
5 Respondent.

6 7. Accordingly, Petitioner failed to establish a violation of A.R.S. § 33-1242.

7 8. A.R.S. § 33-1260.01 provides, in relevant part, as follows:

8 C. Notwithstanding any provision in the condominium documents, on
9 rental of a unit an association shall not require a unit owner or a unit
10 owner's agent to disclose any information regarding a tenant other than
11 the name and contact information for any adults occupying the unit, the
12 time period of the lease, including the beginning and ending dates of the
13 tenancy, and a description and the license plate numbers of the tenants'
14 vehicles.

15 9. Section 7.21 of the CC&Rs provides, in relevant part, as follows:

16 Limitations on Leasing of Units. No Unit Owner may lease less than his
17 entire Unit. All leases shall be in writing, shall be for a term of not less
18 than thirty (30) days, and shall provide that the terms of the lease shall be
19 subject in all respects to the provisions of the Condominium Documents
20 and that any failure by the lessee to comply with the terms of the
21 Condominium Documents shall be a default under the lease. Upon
22 leasing his Unit, a Unit Owner shall promptly notify the Association of the
23 commencement date and termination date of the lease and the names of
24 each lessee or other person who will be occupying the Unit during the
25 term of the lease.

26 10. Section 7.3 of the CC&Rs provides, in relevant part, as follows:

27 No gainful occupation, profession, trade or other nonresidential use shall
28 be conducted on or in any Unit or Limited Common Element, but a Unit
29 Owner or other resident may conduct a business activity within a Unit so
30 long as: . . . (iii) the business activity does not involve persons coming to
the Unit.

11. Petitioner argued that Respondent could not require that he provide the
dates of each occupant's stay in the units or that each occupant had to stay at least 30
days. Petitioner asserted that, because he was leasing his units to Mr. Shapley and Mr.
Shapley was not charging a specific rental fee from the occupants, the occupants were
merely “guests” of Mr. Shapley. Petitioner drew comparisons to other times he leased

one of his units for 30 days with the advance knowledge that the renters would be occupying the unit for less than the full 30 days or when owners let friends or family stay in their unit for less than 30 days at a time.

12. In the instant matter, Respondent, upon realizing that Mr. Shapley had leased multiple units during the same time period, made inquiries as to who would actually be occupying the units during the rental period as Mr. Shapley could not be residing in multiple units at once. After Respondent understood the nature of Mr. Shapley's business and purpose for leasing the units, Respondent found that Mr. Shapley was, in a form, subletting the units for his business.

13. The fact that Mr. Shapley was not charging a specific amount for rent and that accommodations were included with the overall camp price does not mean that he was not subletting. In part, this is reflected in the fact that the price of the camp changed based on how many people would share a unit. The more people sharing a unit, the lower the price per person.

14. Further, Mr. Shapley was operating a business from the units in such a way that required people to come to the unit. This was prohibited by the CC&Rs.

15. It appears this is a situation in which the particular set of facts falls between the cracks of the specific language of the statutes and the regulations. However, given the totality of the circumstances, the spirit and purpose of the applicable rules is to allow an association to know who is in the community and to prevent an itinerant population.

16. Accordingly, Petitioner failed to establish Respondent violated either A.R.S. § 33-1260.01 or the provisions of the CC&Rs.

17. A.R.S. § 33-1260.01(E) provides, in relevant part, as follows:

E. Notwithstanding any provision in the condominium documents, the association is prohibited from doing any of the following:

...

4. Imposing on a unit owner or managing agent any fee, assessment, penalty or other charge in an amount greater than fifteen dollars for incomplete or late information regarding the information requested pursuant to subsection C of this section

F. Any attempt by an association to exceed the fee, assessment, penalty or other charge authorized by subsection D or E of this section voids the

1 fee, assessment, penalty or other charge authorized by subsection D or E
2 of this section.

3 18. The Boulder Canyon Homeowner Association Lease Requirement and 30
4 Day Rental Policy provides that a \$300.00 fine would be imposed on 30 day minimum
5 lease policy violations, and that, in addition, all expenses related to the collection of
6 fines, including attorney fees and collection agency fees, would be the Unit Owner's
7 responsibility.

8 19. The evidence presented showed that Respondent had not assessed any
9 fees for the violation of the 30 day minimum lease policy or the failure to provide the
10 required information in advance of the occupancy. Rather, the \$250.00 charge was
11 clearly for attorney fees related to the possible collection of assessments relating to
12 those charges. Nothing in the cited statute or the CC&Rs prohibits such a charge being
13 implemented.

14 20. Therefore, Petitioner failed to establish a violation of A.R.S. § 33-
15 1260.01(E).

16 **ORDER**

17 In view of the foregoing, IT IS ORDERED that the Petition be dismissed.

18 **NOTICE**

19 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
20 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S.**
21 **§ 41-1092.09, a request for rehearing in this matter must be filed with the**
22 **Commissioner of the Department of Real Estate within 30 days of the service of**
23 **this Order upon the parties.**

24 Done this day, December 17, 2018.

25 /s/ Tammy L. Eigenheer
26 Administrative Law Judge
27

28 Copy mailed/e-mailed or faxed December 17, 2018 to:

29 Judy Lowe, Commissioner
30 Arizona Department of Real Estate

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