

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Jerry R. Collis

No. 19F-H18020-REL

4 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 vs.

6
7 Laveen Meadows HOA
8 c/o Planned Development Services,

9 Respondent

10 **HEARING:** December 4, 2018

11 **APPEARANCES:** Jerry R. Collis on his own behalf; Chad Gallacher, Esq. for
12 Respondent

13 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

14
15 **FINDINGS OF FACT**

16 1. On October 5, 2018, the Arizona Department of Real Estate issued a
17 Notice of Hearing setting the above-captioned matter for hearing on December 4, 2018
18 at the Office of Administrative Hearings in Phoenix, Arizona.

19 2. Petitioner Jerry R. Collis appeared and testified on his own behalf.
20 Respondent Laveen Meadows HOA presented the testimony of Lisa Riesland, its
21 Community Manager.

22 3. On or about September 17, 2018, Mr. Collis filed with the Department the
23 petition that gave rise to this matter.

24 4. The Notice of Hearing shows that Mr. Collis alleges that Respondent
25 violated Article 10, Section 10.11.4 of the Respondent's CC&Rs.

26 5. Section 10.11.4 provides that "No Motor Vehicles of any kind which are not
27 in operating condition shall be parked in any unenclosed parking areas (including, but
28 not limited to, private driveways appurtenant to a Dwelling Unit)." Section 10.11.4 was
29 amended in May 2013 to clarify what is meant by "operating condition."
30

1 6. At the hearing, Mr. Collis acknowledged that the Respondent could not
2 violate Section 10.11.4 and explained that the issue he was raising was that the
3 Respondent had issued citations alleging that he had violated Section 10.11.4, when he
4 was not in violation of that provision. Mr. Collis's petition supports his position as to the
5 issue he was raising.

6 7. Respondent objected to reframing the issue, and Ms. Riesland testified
7 that the citations were issued based on not just in CC&R section 10.11.4, but also
8 sections 10.11.2 and 10.16.

9 8. CC&R Section 10.11.2 prohibits parking on the streets.

10 9. CC&R Section 10.16 prohibits nuisances, which are defined to include
11 conditions that are unsightly or that could reasonably cause annoyance to other
12 members of the Association.

13 10. As pertinent to this matter, Respondent issued to Mr. Collis seven
14 notifications/letters regarding his vehicle. All seven notifications included the statement:
15 "Violation: Vehicle Parking – Inoperable Vehicle" but none of the notifications listed a
16 specific provision of the CC&Rs as having been violated.

17 11. Through a letter dated September 19, 2016, Respondent notified Mr.
18 Collis that his vehicle had expired tags and that inoperable vehicles could not be stored
19 on the street. The letter informed Mr. Collis that he had ten days to correct the violation.

20 12. Through a letter dated October 11, 2016, Respondent informed Mr. Collis
21 that inoperable vehicles could not be stored on the street and that to avoid a \$25 fine,
22 he was required to correct the violation within ten days. The letter also informed Mr.
23 Collis of his right to appeal the matter to the Board and of his right to request an
24 administrative hearing pursuant to ARIZ. REV. STAT. section 41-2198.01.¹

25 13. There was no evidence adduced to show that Mr. Collis filed a written
26 appeal with the Board regarding the October 11, 2016 letter or that he requested an
27 administrative hearing regarding the proposed fine.

28 14. Through a letter dated December 1, 2016, Respondent informed Mr. Collis
29 that inoperable vehicles could not be stored on the street and that his account had been
30

¹ This statute has since been renumbered as ARIZ. REV. STAT. section 32-2199.01.

1 charged a \$25 fine. The letter also informed Mr. Collis of his right to appeal the matter to
2 the Board and of his right to request an administrative hearing pursuant to ARIZ. REV.
3 STAT. section 41-2198.01.

4 15. There was no evidence adduced to show that Mr. Collis requested an
5 administrative hearing regarding the \$25 fine. Mr. Collis did however appeal the matter
6 to Respondent's Board. Through a letter dated January 26, 2017, the Board informed
7 Mr. Collis that his appeal had been denied.

8 16. Through a letter dated April 20, 2017, Respondent informed Mr. Collis that
9 inoperable vehicles could not be stored on the street and that his account had been
10 charged a \$50 fine and a \$10 mailing fee. The letter informed Mr. Collis that he had ten
11 days to correct the violation. The letter also informed Mr. Collis of his right to appeal the
12 matter to the Board and of his right to request an administrative hearing pursuant to
13 ARIZ. REV. STAT. section 41-2198.01.

14 17. There was no evidence adduced to show that Mr. Collis filed a written
15 appeal with the Board regarding the April 20, 2017 letter or that he requested an
16 administrative hearing regarding the proposed fine.

17 18. Through a letter dated May 9, 2017, Respondent informed Mr. Collis that
18 inoperable vehicles could not be stored on the street and that his account had been
19 charged a \$100 fine and a \$10 mailing fee. The letter informed Mr. Collis that he had
20 ten days to correct the violation. The letter also informed Mr. Collis of his right to appeal
21 the matter to the Board and of his right to request an administrative hearing pursuant to
22 ARIZ. REV. STAT. section 41-2198.01.

23 19. There was no evidence adduced to show that Mr. Collis filed a written
24 appeal with the Board regarding the May 9, 2017 letter or that he requested an
25 administrative hearing regarding the proposed fine.

26 20. Through a letter dated May 23, 2017, Respondent informed Mr. Collis that
27 inoperable vehicles could not be stored on the street and that his account had been
28 charged a \$100 fine and a \$10 mailing fee. The letter informed Mr. Collis that he had
29 ten days to correct the violation. The letter also informed Mr. Collis of his right to appeal
30 the matter to the Board and of his right to request an administrative hearing pursuant to
ARIZ. REV. STAT. section 41-2198.01.

1 21. There was no evidence adduced to show that Mr. Collis filed a written
2 appeal with the Board regarding the May 23, 2017 letter or that he requested an
3 administrative hearing regarding the proposed fine.

4 22. Through a letter dated June 8, 2017, Respondent informed Mr. Collis that
5 inoperable vehicles could not be stored on the street and that his account had been
6 charged a \$100 fine and a \$10 mailing fee. The letter informed Mr. Collis that he had
7 ten days to correct the violation. The letter also informed Mr. Collis of his right to appeal
8 the matter to the Board and of his right to request an administrative hearing pursuant to
9 ARIZ. REV. STAT. section 41-2198.01.

10 23. There was no evidence adduced to show that Mr. Collis filed a written
11 appeal with the Board regarding the June 8, 2017 letter or that he requested an
12 administrative hearing regarding the proposed fine.

13 24. Through a letter dated June 26, 2017, Respondent informed Mr. Collis that
14 inoperable vehicles could not be stored on the street and that his account had been
15 charged a \$100 fine and a \$10 mailing fee. The letter informed Mr. Collis that he had
16 ten days to correct the violation. The letter also informed Mr. Collis of his right to appeal
17 the matter to the Board and of his right to request an administrative hearing pursuant to
18 ARIZ. REV. STAT. section 41-2198.01.

19 25. There was no evidence adduced to show that Mr. Collis filed a written
20 appeal with the Board regarding the June 26, 2017 letter or that he requested an
21 administrative hearing regarding the proposed fine.

22 26. The seven notifications/letters that Respondent sent to Mr. Collis make
23 reference to the fact that there were cobwebs and debris on or beneath the vehicle. Ms.
24 Riesland provided credible testimony to the effect that at various times these cobwebs
25 extended from the vehicle to the ground and that there were leaves trapped in the
26 cobwebs. Ms. Riesland testified to the effect that the debris and cobwebs created an
27 unsightly condition as defined in CC&R Section 10.16.

28 27. At the time the Respondent issued the letters dated June 8 and June 26,
29 2017, the vehicle also had a flat tire and a bag or cardboard covering one window. Mr.
30 Collis acknowledged this to be correct, and explained that the vehicle had been
vandalized.

28. Mr. Collis testified to the effect that the vehicle was never inoperable.

CONCLUSIONS OF LAW

1. The Department of Real Estate has authority over this matter. ARIZ. REV. STAT. Title 32, Ch. 20, Art. 11.

2. Mr. Collis bears the burden of proof, and the standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

3. A preponderance of the evidence is:

The 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.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4. The CC&Rs are a contract between the parties and the parties are required to comply with its terms. *See McNally v. Sun Lakes Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 382 P.3d 1216 (2016 App.). In exercising its authority under the CC&Rs, Respondent must act reasonably. *See Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

5. The preponderance of the evidence shows that Respondent issued citations to Mr. Collis based on its findings that he had violated CC&R Sections 10.11.2, 10.11.4 and 10.16. Consequently, showing that his vehicle was in operating condition would not be sufficient to show that the citations were unwarranted.

6. Mr. Collis has failed to show that the Respondent violated any of the CC&Rs, other community documents, or the statutes that regulate planned communities. *See* ARIZ. REV. STAT. § 32-2199.01(A).

7. Mr. Collis's petition should be dismissed and the Respondent be deemed to be the prevailing party in this matter.

ORDER

IT IS ORDERED that Petitioner Jerry R. Collis's petition is dismissed.

NOTICE

Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-2199.04. Pursuant to ARIZ. REV. STAT. section 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, December 20, 2018.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Copy mailed/e-mailed/faxed December 20, 2018

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