

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Dennis J Gregory,
4 Petitioner,

5 vs.

6 Four Seasons at the Manor Homeowners
7 Association,
8 Respondent.

No. 19F-H1919069-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 **HEARING:** September 4, 2019

10 **APPEARANCES:** Dennis Gregory (Petitioner) appeared on behalf of himself.
11 Marc Vasquez appeared on behalf of Respondent Four Seasons at the Manor
12 Homeowners Association.

13 **ADMINISTRATIVE LAW JUDGE:** Antara Nath Rivera

14 **FINDINGS OF FACT**

15 1. Dennis Gregory (Petitioner) owns a house located at 16008 North 109th
16 Lane, Sun City, Arizona, 85351. Petitioner belongs to the Four Seasons at the Manor
17 Homeowners Association (Respondent).

18 2. On or about May 24, 2019, Petitioner filed a two-issue Homeowners
19 Association Dispute Process Petition (Petition) with the Arizona Department of Real
20 Estate (Department), which contained an allegation that Respondent violated 8.1.7 of its
21 Covenants, Conditions, and Restrictions (CC&Rs), and A.R.S. § 33-1803.

22 3. On June 28, 2019, Respondent filed its "Answer Re: Case #H019-19/069"
23 (Answer). In its Answer, Respondent addressed the first violation and indicated that it
24 sent a courtesy notice to Petitioner on July 13, 2018 requesting the removal of palm
25 trees in the front yard, in violation of the CC&Rs. Petitioner disputed the violation. Upon
26 a further review, Respondent discovered that the palm trees on Petitioner's property
27 were, in fact, listed under the "Recommended Plant List" and were acceptable.

28 4. In its Answer, Respondent indicated that it issued a courtesy letter to
29 Petitioner, on August 16, 2018. Respondent further indicated that the courtesy notice
30 was deemed invalid and was "removed and expunged" from Petitioner's and
 Respondent's records.

1 5. The hearing on the Petition was conducted on September 4, 2019.
2 Petitioner testified on his own behalf.

3 6. At hearing, Petitioner testified that he filed the Petition after Respondent
4 sent the apology letter and the issue regarding the palm tree was resolved. Petitioner
5 stated he did this because he was upset that Respondent fraudulently sent the courtesy
6 letter. He further added that Respondent lied about discussing the palm tree issue with
7 the Board members, that Respondent did not disclose the identity of the person who
8 alleged Petitioner's palm trees were poisonous, and that Respondent deceptively
9 changed the CC&Rs with respect to the name of the trees permitted.

10 7. Petitioner acknowledged that Respondent issued an apology letter to him
11 on August 16, 2018. Petitioner testified that Respondent sent the letter via email and
12 postal mail. He stated that Respondent never imposed any fines with respect to the
13 palm tree issue. He stated that Annette McCraw (Ms. McCraw) issued the letter on
14 behalf of Respondent. Petitioner stated that Ms. McCraw worked for Trestle
15 Management Group, LLC (Trestle), Respondent's management company.

16 8. Petitioner testified that Ms. McCraw lied to him when she told him that she
17 spoke with the board members about the palm tree issue. He further stated that Ms.
18 McCraw threatened him with a lawyer. Petitioner opined that Ms. McCraw and
19 Respondent deceived him when Ms. McCraw made that statement and threat.
20 Petitioner stated that her actions were a violation of the CC&Rs and the planned
21 community statute A.R.S. §§ 33-1803.

22 9. Petitioner testified that he subsequently spoke with Marc Vazquez (Mr.
23 Vasquez) at one of the board meetings, regarding this issue. He stated the Mr. Vasquez
24 apologized to him and informed him that Ms. McCraw was no longer with Trestle.

25 10. At hearing, Mr. Vasquez testified on behalf of Respondent. He testified
26 that he was vice president of Trestle. He stated that Respondent acknowledged that it
27 was in error and sent Petitioner an apology letter. Mr. Vasquez stated that he and the
28 board members discussed the error and decided that Respondent would apologize for
29 any misunderstanding. Mr. Vasquez stated that the courtesy letter was removed and
30 expunged from Respondent's records to preserve Petitioner's good standing. Mr.

Vasquez confirmed that Ms. McCraw no longer worked at Trestle. Mr. Vasquez opined that Respondent did not impose any fines or sanctions upon Petitioner.

CONCLUSIONS OF LAW

1. ARIZ. REV. STAT. ("A.R.S.") § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.¹

2. This matter lies with the Department's jurisdiction. The Department is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations in Arizona.

3. Petitioner bears the burden of proof to establish that Respondent violated 8.1.7 of its Covenants, Conditions, and Restrictions (CC&Rs), and A.R.S. § 33-1803 by a preponderance of the evidence.² Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.³

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁴ 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."⁵

5. Petitioner failed to establish, by a preponderance of the evidence, that Respondent violated the CC&Rs and A.R.S. § 33-1803 when he acknowledged that Respondent did not financially penalize him and when he acknowledged that Respondent issued an apology letter. Evidence was established that Petitioner's palm trees were in accordance with Respondent's rules and Petitioner was allowed to keep the trees. Furthermore, the evidence established that Respondent immediately notified

¹ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&RSs

² See A.R.S. § 41-1092.07(G)(2); 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).

³ See A.A.C. R2-19-119(B)(2).

⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 Petitioner that the courtesy letter was "removed and expunged" from Petitioner's
2 records, as well as from Respondent's records.

3 6. Furthermore, the preponderance of the evidence showed Respondent did
4 not violate any rules or regulations that would facilitate any orders or sanctions once it
5 issued the apology letter, thus making the issue moot.

6 **ORDER**

7 **IT IS ORDERED** that Petitioners' petition is denied.

8 **NOTICE**

9 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the**
10 **parties unless a rehearing is granted pursuant to A.R.S. § 32-**
11 **2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in**
12 **this matter must be filed with the Commissioner of the Department of**
13 **Real Estate within 30 days of the service of this Order upon the**
14 **parties.**

15 Done this day, September 24, 2019.

16 /s/ Antara Nath Rivera
17 Administrative Law Judge

18 Transmitted by either mail, e-mail, or facsimile September 24, 2019 to:

19
20 Judy Lowe, Commissioner
21 Arizona Department of Real Estate
22 100 N. 15th Avenue, Suite 201
23 Phoenix, Arizona 85007

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