

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Robert L Greco,
4 Petitioner,
5 vs.
6 Bellasera Community Association, Inc.,
7 Respondent.

No. 20F-H2019018-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** January 9, 2020

9 **APPEARANCES:** Petitioner Robert L. Greco appeared on his own behalf.
10 Respondent Bellasera Community Association, Inc. was represented by Nathan
11 Tennyson.

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

13 **FINDINGS OF FACT**

14 1. Bellasera Community Association, Inc. (Respondent) is an association of
15 homeowners located in Arizona.

16 2. On or about October 11, 2019, Robert L. Greco (Petitioner) filed a
17 Homeowners Association (HOA) Dispute Process Petition (Petition) with the Arizona
18 Department of Real Estate (Department) alleging that Respondent had violated the
19 provisions of A.R.S. § 33-1803(B). Petitioner's statement of the issue provided as follows:

20 Petitioner has resided in the Bellasera Community for 17 years, and has
21 made all quarterly dues payments in a timely manner. On July 1, 2019,
22 Petitioner was denied automatic gate access and use of clubhouse facilities.

23 All errors in original.

24 3. After being notified of the Petition, Respondent filed a response in which
25 Respondent denied all of the complaint items in the Petition.

26 4. At hearing, Petitioner testified on his own behalf and submitted six exhibits.
27 Respondent presented the testimony of David Reid, member of the Board of Directors,
28 and Annette McCarthy, Acting Manager, and submitted four exhibits. Based on the
29 evidence presented at hearing, the following occurred:

1 a. On or about February 5, 2013, Respondent sent Petitioner an Initial Notice
2 (Courtesy Notice) to his residential address notifying him that “[d]uring a regular
3 community inspection on **02/05/2013, it was noted that your garage is faded**
4 **and needs to be repainted which is a violation of the Design Guidelines.**”
5 Included with the Courtesy Notice was an Architectural Review Committee
6 Submittal Petitioner could fill out and submit to get approval for painting the
7 garage.

8 b. On or about March 14, 2013, Respondent sent Petitioner a Final Notice to his
9 residential address indicating as follows:

10 This is a follow-up to my letter to you of 02/05/2013. I have not heard
11 from you since sending my previous letter and I observed in a repeat
12 inspection that the violation described in my earlier letter either
13 continues or has reoccurred.

14 On behalf of Bellasera’s Board of Directors, I regret to inform you
15 that, in accordance with your community’s Violation Enforcement
16 policy, dated February 24, 2011, available at www.azbellasera.org, a
17 fine of \$250.00 has been posted to your account for the violation
18 indicated above. An additional fine of \$250 will be assessed
19 automatically every 14 days after your receipt of this notice if the
20 violation remains uncorrected. An additional fine of \$250 will be
21 assessed if the violation is cured and the same violation reoccurs
22 within 60 days of the original violation.

23 c. On or about April 2, 2013, Respondent sent Petitioner a Notice of Remedy to
24 his residential address indicating as follows:

25 This is a follow-up to my letters to you of **2/5/2013 and 3/14/13**. I
26 have not heard from you since sending my previous letters and I note
27 from a repeat inspection that the following violation continues on your
28 property:

29 **A violation of the CC&Rs, Article V, 5.2 and Bellasera’s Design**
30 **Guidelines, I was noted.**

On behalf of Bellasera’s Board of Directors, I regret to inform you
that, in accordance with your community’s Violation Enforcement
policy, dated April 24, 2008, available at www.azbellasera.org, the
Board has declared a continuing violation and a fine of \$250.00 has
been posted to your account for the violation indicated above.
Please note if this violation is not corrected the Homeowner’s
Association has the ability to suspend privileges for use of the
Recreational Facilities.

1 In accordance with the Enforcement Policy, you may request a
2 hearing before the Board of Directors to appeal this action by
3 delivering a Notice of Appeal by certified mail to me at the above
4 address within 14 days after receipt of this letter. The Notice of
Appeal must set forth the reasons that you believe the alleged
Violation is invalid or the proposed remedy is not warranted.

- 5 d. On or about May 7, 2013, Respondent sent Petitioner a Fourth Notice of Non-
6 Compliance/Fine Notification to his residential address indicating as follows:

7 We have become aware of violation(s) of the governing documents in
8 connection with your lot/unit that appears to deviate from community
9 restrictions and ask that it be brought into compliance. You are
hereby notified of the following violation:

10 **A violation of the CC&Rs, Article V, 5.2 and Design Guidelines, J**
11 **was noted.**

12 **A fine of \$250.00 has been posted to your account for the**
13 **violation indicated above. Please bring this issue into**
14 **compliance within 14 days of this notice. Pursuant to Arizona**
15 **law, you have the right to appeal the fine before the fine**
16 **becomes a permanent obligation. Please visit**
17 **<http://www.hoacompliance.com/Appeals> to file your appeal.**
18 **Requests for appeal must be received within 15 days of receipt**
19 **of this letter and present applicable back up documentation**
20 **supporting your extenuating circumstances. If the Board**
21 **approves your appeal, the fine will be reversed.**

- 22 e. On or about June 5, 2013, Kelly Oetinger, counsel for Respondent, sent a letter
23 to Petitioner at his residential address. The letter provided, in pertinent part, as
24 follows:

25 I have reviewed communications from the Association relating to
26 your violation of the use restrictions contained in the Declaration of
27 Covenants, Conditions and Restrictions ("CC&Rs"). You are
28 required to maintain the exterior appearance of Lot 73. The paint on
29 your garage door is fading. You must repaint the exterior of your
30 garage door. The Association has sent you four (4) violation notices
requesting that you repaint the exterior of your garage door. Despite
these notices, you have not repainted the exterior of the garage door
on Lot 73. Your failure to repaint the exterior of your garage door is a
violation of the CC&Rs.

The Association has received complaints about the exterior
appearance of your Lot. . . . When you purchased your home within
the Association, you were on notice of Article V, Section 5.2 of the

1 CC&Rs that states in pertinent part that, "Each Owner shall maintain
2 their Lot, and Dwelling Unit, and all structures, parking areas,
3 landscaping, and other improvements comprised the Lot in a manner
4 consistent with the Community-Wide Standard and all applicable
5 covenants." You were also on notice of Article III, Section J of the
6 Design Guidelines that states in pertinent part that, "Colors should be
7 deep, muted tones chosen to blend with the natural colors of the
8 desert vegetation and mountains."

9 Please repaint the exterior of your garage door within fifteen (15)
10 days of this letter. If you do not repaint the exterior of the garage door
11 within the time frame the Association may disable the transponder
12 you use to enter the community and may disable the fobs you use for
13 the clubhouse. You have already been fined for these violations.

- 14 f. On or about July 5, 2013, Respondent sent a letter to Petitioner at his
15 residential address that provided as follows:

16 It was brought to my attention that you have complied to the request
17 to paint your garage door and I thank you. The Board of Directors
18 have agreed if you pay \$500.00 of the total \$900.00 in fines that are
19 due within 10 days of receipt of the letter, the Association will forgive
20 the other \$400.00. However, if we do not receive the \$500.00 within
21 10 days we will take further action which can include the deactivation
22 of your gate openers and fobs.

- 23 g. On or about July 5, 2013, Petitioner sent a letter to Respondent in which he
24 stated the following:

25 I wish to inform you that I have re-painted the garage door of my home. I
26 apologize for any inconvenience. Also, I believe that is necessary for
27 you to understand the time-line of my schedule.

28 To effectively manage my workload, I dispose of unsolicited mail.
29 Routinely, Saturdays are my mail pick-up days, and invariably, I walk
30 straight to the re-cyclable container, and deposit the mail in the
receptacle. At first glance, I was discarding the Brown/Olcott, PLLC
letter until I realized that the contents could contain information requests
concerning my company's liabilities. I opened the letter, read the first
paragraph, and noted that there is a concern about the appearance of
my garage door. I was astonished to learn that my garage door failed
inspection. This is my initial alert of the garage door condition.

Reviewing my work/travel schedule, the first opportunity to paint the
garage door would be Thursday, July 4th. I entered the paint project into
my calendar, made preparations to determine the correct color, and the
retail outlet to purchase the paint. Previous to the Brown/Olcott letter, I

1 have targeted the week of October 28th to re-paint the exterior of my
2 entire house.

3 On again, I apologize for any inconvenience. In the future, I will exercise
4 greater caution in disposing of unsolicited mail.

- 5 h. On or about July 17, 2013, Respondent sent a letter to Petitioner at his
6 residential address, that provided as follows:

7 Thank you for your letter dated July 5, 2013. Attached are copies of the
8 violation letters you requested that were mailed on February 5th, March
9 14th, April 2nd, and May 7th, 2013. A copy of the July 1, 2013 statement
10 for assessments is also attached which shows that fines were added to
11 your homeowner ledger.

12 I do owe you an apology, as the amount of the fines should be \$750 (as
13 shown on your July statement) and not \$900 as indicated in my letter
14 due to an AAM internal accounting error. The Board of Directors have
15 agreed if you pay \$375 of the total \$750 in fines that are due within 10
16 days of the receipt of this letter, the balance of \$375.00 will be waived.
17 At this time, there are no attorney fees due.

- 18 i. Since 2013, Petitioner received quarterly statements indicating a \$750.00
19 balance and the current assessments. Each quarter, Petitioner would cross out
20 the \$750.00 balance and pay the current assessment.
- 21 j. In or around June 2019, Petitioner received a telephone call from Dennis
22 Carson, a friend who was sitting on the Board of Directors. Mr. Carson
23 informed Petitioner that his name was on a list of penalties and the Board was
24 going to deactivate Petitioner's security gate fob and access to the clubhouse.
25 Mr. Carson advised Petitioner to offer \$100.00 or \$150.00 to the Board to settle
26 the outstanding fines.
- 27 k. Petitioner made an offer of \$100.00 to the Board to resolve the outstanding fine
28 issue. The Board responded that it would accept \$250.00 to settle the matter.
29 Petitioner responded that he would pay \$251.00, \$250.00 to settle the
30 outstanding fines and \$1.00 to rent the clubhouse on a specific date.
- l. The Board declined Petitioner's offer of \$251.00.
- m. At some point, Respondent deactivated Petitioner's security gate fob and
access to the clubhouse.

CONCLUSIONS OF LAW

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

3 2. In this proceeding, Petitioner bears the burden of proving by a
4 preponderance of the evidence that Respondent violated A.R.S. § 33-1803(B). A.A.C.
5 R2-19-119.
6

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

10 4. A.R.S. § 33-1803(B) provides, in pertinent part, as follows:

11 After notice and an opportunity to be heard, the board of directors may
12 impose reasonable monetary penalties on members for violations of the
13 declaration, bylaws and rules of the association. Notwithstanding any
14 provision in the community documents, the board of directors shall not
15 impose a charge for a late payment of a penalty that exceeds the greater of
16 fifteen dollars or ten percent of the amount of the unpaid penalty. A
payment is deemed late if it is unpaid fifteen or more days after its due date,
unless the declaration, bylaws or rules of the association provide for a
longer period.

17 5. Notice is not defined in Title 33, Chapter 16. Notice is commonly defined as
18 “[l]egal notification required by law or agreement, or imparted by operation of law as a
19 result of some fact (such as the recording of an instrument); definite legal cognizance,
20 actual or constructive, of an existing right or title.” BLACK’S LAW DICTIONARY 1090 (8th ed.
21 2004).

22 6. Actual notice is commonly defined as “[n]otice given directly to, or received
23 personally by, a party.” *Id.* Constructive notice is commonly defined as “[n]otice arising by
24 presumption of law from the existence of facts and circumstances that a party had a duty to
25 take notice of” or “notice presumed by law to have been acquired by a person and thus
26 imputed to that person.” *Id.*

27 7. Petitioner asserted that he did not receive any of the notices from
28 Respondent prior to the letter from the letter from the attorney. Petitioner stated that
29 because he promptly painted the garage door after receiving the letter from the attorney,
30

1 he should not have been fined. Petitioner appeared to argue that unless he had actually
2 received the four prior notices sent by Respondent regarding the garage door, he could
3 not held responsible for the warnings included therein.

4 8. Petitioner did not provide any authority that the "notice" required in A.R.S. §
5 33-1803(B) had to be "actual notice." To accept Petitioner's argument, all notices would
6 have to be sent via certified mail to prove a homeowner received them and a homeowner
7 would be able to avoid receiving "actual notice" by simply refusing to sign for a certified
8 mailing.

9 9. Petitioner received constructive notice of the violation of the CC&Rs via the
10 multiple mailings that were presumably delivered to his residential address. Petitioner
11 was also advised in those mailings how to appeal the matter to the Board if he disagreed
12 with the alleged violation. Accordingly, Petitioner was provided notice and an opportunity
13 to be heard in accordance with A.R.S. § 33-1803(B).

14 10. Petitioner also raised an allegation that the Board improperly imposed late
15 fees of \$500.00 on the original fine of \$250.00 when a maximum late charge of the greater
16 of \$15.00 or 25% of the unpaid penalty.

17 11. The notices issued by Respondent clearly stated that an ongoing failure to
18 remedy the violation would resulting in additional fines every 14 days. Petitioner was first
19 fined \$250.00 on March 14, 2013, and he did not paint the garage door until July 5, 2013.
20 Accordingly, Respondent was entitled to impose three fines for the ongoing condition of
21 the garage door.

22 12. Therefore, this Tribunal concludes that Respondent did not violate the
23 provisions of A.R.S. § 33-1803(B).

24 **ORDER**

25 IT IS ORDERED that Petitioner's petition is dismissed.

26 **NOTICE**

27 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the**
28 **parties unless a rehearing is granted pursuant to A.R.S. § 32-**
29 **2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in**

1 **this matter must be filed with the Commissioner of the Department of**
2 **Real Estate within 30 days of the service of this Order upon the parties.**

3
4 Done this day, January 29, 2020.

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

8 Transmitted electronically to:

9 Judy Lowe, Commissioner
10 Arizona Department of Real Estate
11 100 N. 15th Avenue, Suite 201
12 Phoenix, Arizona 85007

13 Robert L Greco
14 7363 E Visao Drive
15 Scottsdale, AZ 85266

16 Nathan Tennyson
17 Brown|Olcott, PLLC
18 373 South Main Avenue
19 Tucson, AZ 85701
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