

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Mary J Bartle,
4 Petitioner,
5 vs.
6 Saguaro West Owner's Association,
7 Respondent.

No. 19F-H1919059-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** January 14, 2020

9 **APPEARANCES:** Mary J. Bartle on her own behalf; Nicole Payne, Esq. for
10 Respondent

11 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

12 **FINDINGS OF FACT**

13 1. On November 18, 2019, the Arizona Department of Real Estate issued an
14 Order Granting Rehearing and Notice of Rehearing setting the above-captioned matter
15 for rehearing on January 14, 2020 at the Office of Administrative Hearings ("OAH") in
16 Phoenix, Arizona.

17 2. Petitioner Mary J. Bartle appeared at the rehearing and testified on her
18 own behalf. Respondent Saguaro West Owner's Association was represented by
19 counsel but presented no witnesses.

20 3. The Administrative Law Judge informed the parties that he would take
21 notice of the record from the original matter, including the Administrative Law Judge
22 Decision that was issued on September 18, 2019.

23 4. On or about April 22, 2019, Ms. Bartle filed with the Department the
24 petition that gave rise to this matter.

25 5. Although Ms. Bartle paid the fee for only a single issue hearing, her
26 petition arguably raised more than one issue and before the original hearing was
27 convened, she was directed to file with the OAH a statement setting forth her single
28 issue. Although Ms. Bartle believed she had filed the required statement at the OAH,
29 the docket did not have that information and it appeared as though she may have filed
30 the information only with the Department of Real Estate.

1 6. At the outset of the first hearing (held on August 29, 2019), discussion
2 regarding the scope of the hearing was held and Ms. Bartle agreed to limit her petition
3 to the single issue of whether the Association had violated Bylaws Article VIII, section
4 8(d) by making a withdrawal of \$49,000.50 from the operating account on October 22,
5 2018, and redepositing the same amount on November 30, 2018. Administrative Law
6 Judge Decision at Finding of Fact No. 5.

7 7. Bylaws Article VIII, section 8(d) provides:

8 The Treasurer shall receive and deposit in the Association's
9 bank accounts all monies received by the Association and
10 shall disburse such funds as directed by resolution [of] the
11 Board of Directors; shall properly prepare and sign all checks
12 before presenting them to be co-signed; keep proper books of
13 account; cause an annual audit of the Association's books to
14 be made by a public accountant at the completion of each
15 fiscal year; and shall prepare an annual budget to be
16 presented to the membership at the annual meeting; to cause
17 all Federal and State reports to be prepared; and shall prepare
18 all monthly statements of finance for the Board of Directors.

19 8. After taking evidence in the first hearing, the Administrative Law Judge
20 concluded that:

21 The evidence shows that \$49,000.50 was withdrawn from the
22 Association's account in October 2018 and the same amount
23 was deposited in November 2018, and there is evidence to
24 suggest that the transactions may have been in violation of the
25 law. But Ms. Bartle has not shown by a preponderance of the
26 evidence these transactions violated any of the specific duties
27 of the treasurer that are set forth in Bylaws Article VIII, section
28 8(d).

29 Administrative Law Judge Decision at Conclusion of Law No.
30 5 (underscoring added).

 9. Based on Conclusion of Law No. 5, the Administrative Law Judge ordered
that Ms. Bartle's petition be dismissed.

1 10. On October 23, 2019, Ms. Bartle filed with the Department a Rehearing
2 Request asserting that there was error in the admission of evidence. Ms. Bartle
3 specifically referenced documents dated July 5, August 6, and September 13, 2019. Ms.
4 Bartle raised no other issues in her Rehearing Request.

5 11. On November 12, 2019, the Association filed with the Department a
6 Response to Request for Rehearing through which it argued to the effect that a
7 rehearing should not be granted because the content of the July 5 and August 6, 2019
8 letters had been addressed during the discussion at the beginning of the first hearing
9 and the September 13, 2019 letter could not have been considered at the hearing
10 because it was written after the hearing date.

11 12. The Department granted Ms. Bartle's request for rehearing and the matter
12 was convened on January 14, 2020.

13 13. Ms. Bartle testified to the effect that laws must have been violated by the
14 withdrawal and redepositing of the \$49,000.50 without the Association's members being
15 provided any notice of these transactions.

16 **CONCLUSIONS OF LAW**

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

19 2. Ms. Bartle bears the burden of proof, and the standard of proof on all
20 issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-
21 19-119.

22 3. A preponderance of the evidence is:

23 The greater weight of the evidence, not necessarily established
24 by the greater number of witnesses testifying to a fact but by
25 evidence that has the most convincing force; superior
26 evidentiary weight that, though not sufficient to free the mind
27 wholly from all reasonable doubt, is still sufficient to incline a fair
28 and impartial mind to one side of the issue rather than the other.
29 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

30 4. The Bylaws 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.).

1 5. Although there is evidence in the record to suggest that the withdrawal and
2 redeposit of the \$49,000.50 may have been in violation of the law or otherwise
3 improper, it has not been shown that these transactions violated any of the treasurer's
4 duties as set out in section 8(d).

5 6. Ms. Bartle has not shown by a preponderance of the evidence that
6 Respondent violated Bylaws Article VIII, section 8(d).

7 7. Ms. Bartle's petition should be dismissed and the Respondent be deemed
8 to be the prevailing party in this matter.

9 **ORDER**

10 **IT IS ORDERED** that Petitioner Mary J. Bartle's petition is dismissed.

11 **NOTICE**

12 **This administrative law judge order, having been issued as a result of a rehearing,**
13 **is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A party wishing to**
14 **appeal this order must seek judicial review as prescribed by ARIZ. REV. STAT.**
15 **section and title 12, chapter 7, article 6. Any such appeal must be filed with the**
16 **superior court within thirty-five days from the date when a copy of this order was**
17 **served upon the parties. ARIZ. REV. STAT. section 12-904(A).**

18 Done this day, January 30, 2020.

19 /s/ Thomas Shedden
20 Thomas Shedden
21 Administrative Law Judge

22 Transmitted to:

23 Judy Lowe, Commissioner
24 Arizona Department of Real Estate
25 100 N. 15th Avenue, Suite 201
26 Phoenix, Arizona 85007

27 Mary Bartle
28 4813 E Westland Rd
29 Cave Creek, AZ 85331
30

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By