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No. 19F-H1919071-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEARANCES: Petitioner Thomas J. Van Dan Elzen appeared on behalf of lf. Augustus H. Shaw IV, Esq. appeared on behalf of Respondent Carter Ranch owners Association.

FINDINGS OF FACT

2. A rehearing was held on January 10, 2020. The Department is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona.

4. On or about June 14, 2019, Mr. Van Dan Elzen filed a single issue petition with the Department alleging that Carter Ranch had violated Arizona Revised Statutes (A.R.S.) § 33-1808. Mr. Van Dan Elzen's petition provided, in relevant part, as follows:

Violation is based on 33-1808 Flags and Signs. HOA declares that my flag does not meet the Association DCC&Rs. Association has written rules and regulations regarding Flags and Flag Poles referencing DCC&R 3.14. Carter Ranch DCC&R 3.14 ONLY defines SIGNS and has no reference to Flags whatsoever.

1 5. Carter Ranch Association Rules and Regulations prohibit flying any flag in
2 Carter Ranch other than the American Flag, an official replica of a flag of the United
3 States Army, Navy, Air Force, Marine Corps or Coast Guard, a POW/MIA flag, Arizona
4 Indian National flag, Arizona State flag, and the Gadsden Flag (Flag Display Rule).

5 6. Article V, Section 5.3 of the Carter Ranch Covenants, Conditions and
6 Restrictions (CC&Rs) provides, in relevant part, as follows:

7 The Board may, from time to time, adopt, amend and repeal
8 rules and regulations pertaining to: (i) the management,
9 operation and use of the Areas of Association Responsibility
10 including, but not limited to, any recreational facilities situated
11 upon the Areas of Association Responsibility; (ii) minimum
12 standards for any maintenance of Lots (iii) the health, safety or
13 welfare of the owners, Lessees and Residence, or (iv)
14 restrictions on the use of Lots... The association Rules shall
15 be enforceable in the same manner as to the same extend as
16 the covenants, conditions and restrictions set forth in this
17 Declaration.

18 7. At hearing, Mr. Van Dan Elzen asserted that because the CC&Rs do not
19 include the word "flag", the Flag Display Rule is inconsistent with the CC&Rs.

20 8. Carter Ranch contended that the Flag Display Rule was not inconsistent
21 with the CC&Rs. Carter Ranch asserted that the petition should be dismissed because
22 Mr. Van Dan Elzen did not allege that Carter Ranch violated any statute or provision of
23 its governing documents. Moreover, Carter Ranch argued that it properly adopted the
24 Flag Display Rule pursuant to CC&R Article V, Section 5.3.

25 **CONCLUSIONS OF LAW**

26 1. At this proceeding, Petitioner bear the burden of proving by a
27 preponderance of the evidence that Respondent violated A.R.S. § 33-1808. See A.A.C.
28 R2-19-119.

29 2. A preponderance of the evidence is "[e]vidence which is of greater weight or
30 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).

 3. A.R.S. § 33-1808, at all relevant times, provided in pertinent part:

1 A. Notwithstanding any provision in the community
2 documents, an association shall not prohibit the outdoor
3 display of any of the following:

4 1. The American flag or an official or replica of a flag of the
5 United States army, navy, air force, marine corps or coast
6 guard by an association member on that member's property if
7 the American flag or military flag is displayed in a manner
8 consistent with the federal flag code (P.L. 94-344; 90 Stat.
9 810; 4 United States Code sections 4 through 10).

10 2. The POW/MIA flag.

11 3. The Arizona state flag.

12 4. An Arizona Indian nations flag.

13 5. The Gadsden flag.

14 C. Notwithstanding any provision in the community
15 documents, an association shall not prohibit the indoor or
16 outdoor display of a political sign by an association member
17 on that member's property, except that an association may
18 prohibit the display of political signs earlier than seventy-one
19 days before the day of an election and later than three days
20 after an election day. An association may regulate the size
21 and number of political signs that may be placed on a
22 member's property if the association's regulation is no more
23 restrictive than any applicable city, town or county ordinance
24 that regulates the size and number of political signs on
25 residential property. If the city, town or county in which the
26 property is located does not regulate the size and number of
27 political signs on residential property, the association shall not
28 limit the number of political signs, except that the maximum
29 aggregate total dimensions of all political signs on a member's
30 property shall not exceed nine square feet. For the purposes
of this subsection, "political sign" means a sign that attempts
to influence the outcome of an election, including supporting
or opposing the recall of a public officer or supporting or
opposing the circulation of a petition for a ballot measure,
question or proposition or the recall of a public officer.

1 4. Upon consideration of the evidence presented at the hearing, the
2 Administrative Law Judge concludes that Petitioner has not established that the Flag
3 Display Rule was inconsistent with the CC&Rs.

4 5. Petitioner has not established that the Association improperly adopted the
5 Flag Display Rule under its CC&Rs.

6 6. Moreover, Petitioner has not alleged that Carter Ranch violated
7 A.R.S. § 33-1808.

8 7. Mr. Van Dan Elzen's petition should be dismissed and the Respondent be
9 deemed to be the prevailing party in this matter.

10 **ORDER**

11 **IT IS ORDERED** that Petitioner Thomas J. Van Dan Elzen's petition is dismissed.

12 **NOTICE**

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

19 Done this day, January 30, 2020.

20 /s/ Velva Moses-Thompson
21 Administrative Law Judge

22 Transmitted electronically to:

23 Judy Lowe, Commissioner
24 Arizona Department of Real Estate