

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 John R Ashley,
 Petitioner,

No. 20F-H2019032-REL-RHG

4 vs.
5 Rancho Reyes II Community Association,
6 Inc.,
 Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

7
8 **HEARING:** July 28, 2020

9 **APPEARANCES:** John R. Ashley on his own behalf; Wendy Ehrlich, Esq. for
10 Respondent

11 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

12 **FINDINGS OF FACT**

13 1. On March 27, 2020, the Arizona Department of Real Estate (“Department”)
14 issued an Order Granting Rehearing and Notice of Rehearing setting the above-
15 captioned matter for rehearing on May 21, 2020 at the Office of Administrative Hearings
16 (“OAH”) in Phoenix, Arizona. The matter was continued and the rehearing was
17 conducted on July 28, 2020.

18 2. Petitioner John R. Ashley appeared at the rehearing and testified on his
19 own behalf. Respondent Rancho Reyes II Community Association, Inc. was
20 represented by counsel but presented no witnesses.

21 3. The parties agreed that the Administrative Law Judge should take notice of
22 the record from the original matter.

23 4. On or about December 9, 2019, Mr. Ashley filed with the Department the
24 single-issue petition that gave rise to this matter.

25 5. In his petition, Mr. Ashley alleged that the Respondent had violated Article
26 III, Section 4 and Article IV, Section 2 of the Bylaws. According to that petition,
27 Respondent did so by failing to have a quorum of Board members at the membership
28 meetings in December 2017 and December 2018.

29 6. Because Mr. Ashley paid the fee for only a single issue hearing, he was
30 directed to file with the OAH a statement setting forth his single issue.

1 7. Through a Notice dated February 18, 2020, Mr. Ashley informed
2 Respondent and the tribunal that his single issue was the allegation that the
3 Respondent had violated Article III, Section 4 of the Bylaws.

4 8. In the original matter, on February 10, 2020, Respondent filed a Motion to
5 Dismiss Petition, arguing to the effect that the petition should be dismissed because
6 Article III, Section 4 does not require that a quorum of Board members be present for a
7 meeting of the members. Mr. Ashley did not file a response to the Motion to Dismiss,
8 and through an Order dated March 3, 2020, Respondent's Motion was granted.

9 9. On March 10, 2020, Mr. Ashley filed with the Department his Request for
10 Rehearing. Respondent filed with the Department a Response on March 23, 2020. As
11 set out above, the Department granted Mr. Ashley's request and the matter was noticed
12 for rehearing.

13 10. Bylaws Article III is entitled "Meetings of Members;" Section 4 is entitled
14 "Quorum."

15 11. Article III, Section 4 provides in pertinent part: "The presence at the
16 meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10th) of
17 the votes of each class of membership will constitute a quorum for any action except as
18 otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws."

19 12. Bylaws Article IV is entitled "Board of Directors: Selection and Term of
20 Office."

21 13. Bylaws Article VI is entitled "Meetings of Directors;" Section 3 is entitled
22 "Quorum." Article VI, Section 3 shows that a majority of Directors constitutes a quorum
23 for the transaction of business.

24 14. Mr. Ashley argues that Roberts Rules of Order support his position, but he
25 presented no evidence to show that Roberts Rules are part of the "Articles of
26 Incorporation, the Declaration, or [the] Bylaws."

27 15. The record shows that there were originally two classes of members, the
28 homeowners and the Developers, but only the membership class remains. Mr. Ashley
29 argues that there is a third class of member, the Board membership class. According to
30

1 Mr. Ashley, Article III, Section 4 requires a quorum of the Board membership class at
2 each annual meeting of the members.

3 4 **CONCLUSIONS OF LAW**

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

7 2. Mr. Ashley bears the burden of proof, and the standard of proof on all
8 issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-
9 19-119.

10 3. A preponderance of the evidence is:

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

18 4. The Bylaws are a contract between the Association and the members, the
19 terms of which the parties are required to comply with. See *McNally v. Sun Lakes*
20 *Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 382 P.3d 1216 (2016 App.); *Rowland v. Union*
21 *Hills Country Club*, 157 Ariz. 301, 757 P.2d 105 (1988 App.).

22 5. Article III, Section 4 of the bylaws is unambiguous in that there is no
23 requirement for a quorum of Board members to be present at a meeting of the
24 membership. The tribunal is required to give effect to those unambiguous terms. See
25 *Grubb & Ellis Management Services, Inc. v. 407417 B.C., L.L.C.*, 213 Ariz. 83, 138 P.3d
26 1210 (App. 2006).

27 16. Mr. Ashley did not present substantial evidence that Roberts Rules of
28 Order are applicable to this matter.

29 17. Mr. Ashley did not present substantial evidence that the Bylaws include a
30 "Board membership class."

18. Mr. Ashley's allegation that Respondent conducted member-meetings
without a quorum of Board members present cannot be a violation of Bylaws Article III,

1 Section 4 because Article III, Section 4 does not require a quorum of Board members to
2 be present at a meeting of the members.

3 6. Consequently, Mr. Ashley has not shown by a preponderance of the
4 evidence that Respondent violated Bylaws Article III, Section 4.

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

7 **ORDER**

8 **IT IS ORDERED** that Petitioner John R. Ashley's petition is dismissed.

9 **NOTICE**

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

16 Done this day, August 11, 2020.

17 /s/ Thomas Shedden
18 Thomas Shedden
19 Administrative Law Judge

20 Transmitted by either mail, e-mail, or facsimile _____, 2020 to:

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9 By _____