

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Samuel T Paparazzo,
4 Petitioner,

No. 20F-H2020061-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Coronado Ranch Community Association,
7 Respondent.

8 **HEARING:** August 18, 2020 at 9:00 AM.

9 **APPEARANCES:** Samuel Paparazzo ("Petitioner") appeared via videoconference
10 on his own behalf. Attorneys Mark Stahl, Esq. and Timothy Butterfield, Esq. appeared via
11 videoconference on behalf of Coronado Ranch Community Association ("Respondent"
12 and "Association") with Kevin Bishop as a witness.

13 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.
14

15 After review of the hearing record in this matter, the undersigned Administrative
16 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
17 ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

18 **FINDINGS OF FACT**

19 **BACKGROUND AND PROCEDURE**

20 1. The Department is authorized by statute to receive and to decide petitions
21 for hearings from members of homeowners' associations and homeowners' associations
22 in the State of Arizona.

23 2. On or about May 15, 2020, the Department received a quadruple-issue
24 petition from Petitioner which alleged that the Association was in violation of Arizona
25 Revised Statutes ("ARIZ. REV. STAT.") §§ 33-1804(A), 33-1804(B), 33-1804(F), and
26 section 2.3, 2.7, and 3.1 of the Association's bylaws.¹ Specifically, alleged that (i) only a
27 small portion of the Association's membership had been provided less than 10-days'
28 notice regarding a "change in venue" of its Annual Meeting, (ii) Petitioner was denied his
29

30 ¹ See Department's electronic file at HO20-20061_Petition&Supplements.pdf.

1 right to speak at the Association's Annual Meeting because he was "blocked" or otherwise
2 prevented from using the online "chat feature," (iii) the Association's Annual Meeting was
3 not properly called to order, and (iv) voting for the Board was not "staggered."

4 3. On May 28, 2020, Petitioner tendered a \$2,000.00 check for the petition fee
5 in this matter to the Department.²

6 4. On June 01, 2020, the Department provided Respondent with notice of
7 Petitioner's petition, and advised that a response was due no later than June 26, 2020.³

8 5. On June 26, 2020, the Department received Respondent's ANSWER
9 whereby it denied all of the complaint items in the underlying petition.⁴

10 6. On July 01, 2020, the Department referred this matter to the Office of
11 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
12 on August 18, 2020. Per the NOTICE OF HEARING the issue to be determined is as follows:

13 **Whether the Association violated ARIZ. REV. STAT.) §§ 33-1804(A), 33-**
14 **1804(B), 33-1804(F), and bylaws 2.3, 2.7, and 3.1.**

15 THE PARTIES AND GOVERNING DOCUMENTS

16 7. Respondent is a homeowners' association whose members own properties
17 in a residential real estate development located in Gilbert, Arizona. Membership for the
18 Association is comprised of the Coronado Ranch Community subdivision.

19 8. Petitioner is a Coronado Ranch Community subdivision property owner and
20 a Member of the Association.

21 9. The Association is governed by its Covenants, Conditions, and Restrictions
22 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The CC&Rs empower the
23 Association to control certain aspects of property use within the development. When a
24 party buys a residential unit in the development, the party receives a copy of the CC&Rs
25 and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract
26 between the Association and each property owner. The Association's bylaws the structure
27

28 ² See Department's electronic file at HO20-20061_Payment.pdf.

29 ³ See Department's electronic file at HO20-20061_Notice_Petition.pdf.

30 ⁴ See Department's electronic file at HO20-20061_Response_Petition.pdf.

of day-to-day governance and contain information on voting processes, quorum requirements, meeting provisions, and other operating guidelines.

10. The Association is also regulated by Title 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

11. Bylaws Article II – Meeting of Members, Section 2.3, Notice of Meetings, states, in pertinent part, that “[w]ritten notice of each meeting of the Members shall be given by mailing a copy of each notice at least ten (10) days before such meeting to each Member entitled to vote. Such notice shall specify the place, day and hour of the meeting. A Member’s attendance at a meeting waives objection to the lack of notice or defective notice of the meeting. A Member’s attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice.”

12. Bylaws Article II – Meeting of Members, Section 2.7, Organization and Conduct of Meeting, states, in pertinent part, that “[a]ll meeting of the Members will be called to order and chaired by the President of the Association. The chair of the meeting shall have the authority to determine the order of business to be conducted at the meeting and to establish reasonable rules for expediting the business of the meeting, but the rulings of the chair with respect to such matters may be overruled by Members having more than fifty percent of the votes represented in person or by proxy at the meeting.”

13. Bylaws Article III – Board of Directors, Section 3.1, Number and Terms of Office, states, in pertinent part, that “[t]he affairs of this Association shall be managed by a board of directors. The initial Board shall consist of one director as provided in the Articles. After the termination of the Declarant Control Period, the Board of Directors shall consist of at least three (3) directors. After the termination of the Declarant Control Period, all directors must be Members of the Association. At the first annual meeting of the members following the termination of the Declarant Control Period, the number of directors shall be increased to five (5). In order to stagger the directors’ terms of office, the directors shall be divided into two (2) groups. One group shall consist of three (3) directors and the other group shall consist of two (2) directors. The group of three (3) directors shall be elected for a term of two (2) years and the group of two directors shall be elected for a term of one (1)

1 year. The three (3) candidates receiving the largest number of votes shall be elected for a
2 term of two (2) years and the two (2) candidates receiving the next highest number of
3 votes shall be elected for a term of two (2) years. Directors elected at any subsequent
4 annual meeting of the members shall be elected for a term of two (2) years.”

5 HEARING EVIDENCE

6 14. Petitioner testified on his own behalf and submitted 9 exhibits⁵ into the
7 record. Respondent called Kevin Bishop as a witness and submitted 4 exhibits⁶ into the
8 record. The Department’s electronic file, including the NOTICE OF HEARING, were also
9 admitted into the record. The substantive facts are as follows:

- 10 a. In 2005, the Declarant Control Period for the Association ended.
- 11 b. Pursuant to ARIZ. ADMIN. CODE R4-9-117 Administrative Notice is taken that
12 the global COVID-19 pandemic reached the United States in February of
13 2020.⁷
- 14 c. On February 20, 2020, the Association issued notice of its annual meeting
15 to Members.⁸ The notice stated that the meeting would be held at 6:30 p.m.
16 on April 02, 2020, at Coronado Elementary School. The notice further stated
17 that Board elections would be held at the meeting, and further indicated that
18 Members could cast their ballots in advance.
- 19 d. On March 12, 2020, the Association mailed ballots to Members.
- 20 e. On March 19, 2020, Arizona Governor Douglas Ducey issued Executive
21 Order 2020-09, limiting the operations of certain businesses to slow the
22 spread of COVID-19.
- 23 f. Shortly afterward, the Association adopted an online platform,
24 ClickMeeting, to provide a means by which homeowners could safely and
25 fully access the Association’s annual meeting. Instructions on how to use
26 the platform were distributed to Members.

27 ⁵ See Petitioner Exhibits B2- B4, B6- B7, B9, 6, 8, and 18.

28 ⁶ See Respondent Exhibits E and J-L.

29 ⁷ See

30 <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e4.htm#:~:text=Community%20transmission%20of%20COVID%2D,of%20COVID%2D19..>

⁸ See Respondent Exhibit E.

- 1 g. On March 23, 2020, Governor Ducey issued Executive Order 2020-12,
2 prohibiting the closure of essential services.⁹
- 3 h. On or about March 25, 2020, the Board's President, Bob Hicks ("President
4 Hicks") officially moved the Association's annual meeting to the virtual
5 ClickMeeting platform. The Association notified Members by placing 12
6 signs at 6 common entrances to the community. The Association also
7 provided notice to approximately 750 Members via email on March 25,
8 2020, March 30, 2020, and April 01, 2020, which had an average open rate
9 of 63.53%. On April 01, 2020, 2 signs were placed at the front entrance to
10 Coronado Elementary School.
- 11 i. Prior to Petitioner's receipt of the Association's notification that its
12 annual meeting would be conducted via ClickMeeting, he had not
13 previously used the online platform.
- 14 ii. Prior to the April 02, 2020, annual meeting Petitioner received
15 instruction from the Association on how to use the ClickMeeting
16 platform.¹⁰
- 17 i. On March 30, 2020, Governor Ducey issued Executive Order 2020-18, also
18 known as the Stay Home, Stay Healthy, Stay Connected order, outlining
19 physical distancing requirements to mitigate the transmission of
20 COVID-19.¹¹
- 21 j. On April 02, 2020, prior to the commencement of the annual meeting, the
22 Association posted the meeting agenda in the attendee's virtual waiting
23 room. After the meeting was opened, the President Hicks called the meeting
24 to order, took roll, and then appointed the Association's Managing Agent
25 and Community Manager, Kevin Bishop ("Agent Bishop"), to chair to the
26 remainder of the meeting.¹² The chat function on the platform was enabled
27 for all Members at that time. Quorum was achieved based on the number of

28 ⁹ See Respondent Exhibit K.

29 ¹⁰ See Petitioner Exhibits B9, 8, and 18.

30 ¹¹ See Respondent Exhibit L.

¹² See Petitioner Exhibit B7.

1 attendees present and absentee ballots received.¹³ Because no quorum
2 had not been achieved at the Association's 2019 annual meeting, there was
3 no vote which resulted in a carryover of open seats. Thus, voting took
4 place for all 5 open Board positions.

5 i. Petitioner wrote several messages in the chat window, but never hit
6 the "enter" key on his keyboard or clicked the "send" button on the
7 platform to transmit his message(s) to the Association during the
8 meeting.¹⁴ Petitioner emailed for assistance during the annual
9 meeting but did not receive a response before the meeting
10 concluded.

11 ii. The ClickMeeting chat feature was successfully used by no less than
12 26 other Members during the annual meeting.

13 k. At no time prior to or during the Association's annual meeting did Petitioner
14 object to the Association's notice of the meeting or Board election.

15 15. In closing, Respondent argued that Petitioner's petition should be dismissed
16 because (i) the Association's 2020 annual meeting had been properly noticed and there
17 had not been a change in venue, (ii) Petitioner failed to establish that the Association
18 prevented him from "speaking" at the annual meeting, (iii) Petitioner conceded during
19 cross-examination that President Hicks had the authority task Agent Bishop with chairing
20 the annual meeting, and (iv) Petitioner also admitted that it had not been possible for the
21 Association to stagger Board electees in the 2020 vote because no quorum had been
22 reached to vote in 2019.

23 16. In closing, Petitioner argued that the Association unlawfully changed its
24 venue and should have its election results invalidated as a result. Petitioner also argued
25 that the Association's online moderated chat policy should be invalidated.

26 **CONCLUSIONS OF LAW**

27 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
28 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a

29 ¹³ See Petitioner Exhibits B2-B4 and 6.

30 ¹⁴ See Petitioner Exhibit 18.

1 planned community association. The owner or association may petition the department
2 for a hearing concerning violations of community documents or violations of the statutes
3 that regulate planned communities as long as the petitioner has filed a petition with the
4 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

5 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
6 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
7 case at bar. OAH has the authority to interpret the contract between the parties.¹⁵

8 3. In this proceeding, Petitioner bears the burden of proving by a
9 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1243.¹⁶

10 4. “A preponderance of the evidence is such proof as convinces the trier of fact
11 that the contention is more probably true than not.”¹⁷ A preponderance of the evidence is
12 “[t]he greater weight of the evidence, not necessarily established by the greater number of
13 witnesses testifying to a fact but by evidence that has the most convincing force; superior
14 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
15 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
16 the other.”¹⁸

17 5. ARIZ. REV. STAT. § 33-1804(A) provides, in pertinent part, that
18 notwithstanding provisions in governing community documents to the contrary, “[a]ll
19 meetings of the members' association ... are open to all members of the association ...
20 and all members so desiring shall be permitted to attend and speak at an appropriate time
21 during the deliberations and proceedings. The board may place reasonable time
22 restrictions on those persons speaking during the meeting but shall permit a member to
23 speak once after the board has discussed a specific agenda item but before the board
24 takes formal action on that item in addition to any other opportunities to speak.”

25 6. ARIZ. REV. STAT. § 33-1804(B) provides, in pertinent part, that
26 notwithstanding provisions in governing community documents to the contrary, “[n]ot
27 fewer than 10 nor more than 50 days in advance of any meeting of the members the

28 ¹⁵ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ¹⁶ See ARIZ. ADMIN. CODE R2-19-119.

30 ¹⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁸ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 [Association] shall cause notice to be hand-delivered or sent prepaid by United States
2 mail to the mailing address for each lot, parcel or unit owner or to any other mailing
3 address designated in writing by a member. The notice shall state the date, time and
4 place of the meeting. A notice of any annual meeting of the members shall state the
5 purpose for which the meeting is called. The failure of any member to receive actual notice
6 of a meeting of the members does not affect the validity of any action taken at that
7 meeting.

8 7. ARIZ. REV. STAT. § 33-1804(F) provides, in pertinent part, that all planned
9 community meetings, “be conducted openly and that notices and agendas be provided for
10 those meetings that contain the information that is reasonably necessary to inform the
11 members of the matters to be discussed or decided and to ensure that members have the
12 ability to speak after discussion of agenda items, but before a vote of the board of
13 directors or members is taken.”

14 8. The issues in this matter are whether the Association is authorized to
15 conduct its annual meeting through an online platform, and whether the Association was
16 authorized to hold elections for all 5 open Board of Director seats on a single ballot. In
17 short, the underlying petition challenges the Board’s authority for its actions during its April
18 02, 2020, annual meeting. The Tribunal concludes that the Board acted within the scope
19 of its statutory authority.

20 9. Here, the material facts are clear.

21 10. Notice of the Association’s 2020 annual meeting was timely and properly
22 noticed to Members. The Association, in compliance with the Governor’s executive
23 orders, moved its meeting to an online platform to stem the spread of COVID-19.
24 Petitioner received notice of this modification and failed to raise an objection prior to or
25 during the meeting at issue. Petitioner’s inability to effectively communicate with the
26 Association during the annual meeting was the result of user error. Petitioner’s chat
27 function had never been disabled by the Association, he simply did not know how to use
28 the platform properly. The Association is not responsible for Petitioner’s lack of
29 ClickMeeting proficiency. President Hick’s chair delegation to Agent Bishop, as well as the
30 subsequent election that took place thereafter, was lawful and appropriate given the

1 circumstances as a result of the prior year's Board vacancy carryover due to lack of
2 quorum.

3 11. Because the record does not establish violation(s) of ARIZ. REV. STAT." §§
4 33-1804(A), 33-1804(B), 33-1804(F), and/or Association bylaw sections 2.3, 2.7, and 3.1
5 occurred by a preponderance of the evidence, the undersigned Administrative Law Judge
6 must conclude that Petitioner failed to sustain his burden of proof in this matter. Therefore,
7 his petition must be denied.

8 **ORDER**

9 Based on the foregoing,

10 **IT IS ORDERED** that Petitioner's petition be denied.

11 *In the event of certification of the Administrative Law Judge Decision by the*
12 *Director of the Office of Administrative Hearings, the effective date of the Order will be five*
13 *days from the date of that certification.*

14 **NOTICE**

15 **Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this Order is binding on the**
16 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04.**
17 **Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter**
18 **must be filed with the Commissioner of the Arizona Department of Real Estate**
19 **within 30 days of the service of this ORDER upon the parties.**

20 Done this day, September 03, 2020.

21 **OFFICE OF ADMINISTRATIVE HEARINGS**

22
23 /s/ Jenna Clark
24 Administrative Law Judge

25 Transmitted electronically to:

26 Judy Lowe, Commissioner
27 Arizona Department of Real Estate
28 DGardner@azre.gov

29 Samuel Paparazzo, Petitioner
30 3419 E Bautista Ct.

1 Gilbert, AZ 85297-3033

2 Stp02@hotmail.com

3 Coronado Ranch Community Association

4 c/o Carpenter, Hazelwood, Delgad & Bolen, LLP, Counsel for Respondent

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