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No. 26F-H116-REL

ADMINISTRATIVE LAW JUDGE DECISION

V.
Lone Mountain Community Association,

Respondent.

APPEARANCES: Evelyn Keiling appeared on behalf of Petitioner Evelyn Keiling, The Keiling Living Trust. Attorneys Mark Sahl and Jonathan Ebertshuser represented Respondent Lone Mountain Community Association with witness Marcia Numerous observers (neighbors) appeared on behalf of Petitioner.

EXHIBITS ADMITTED INTO EVIDENCE: Arizona Department of Real Estate (“Packet”) Exhibits 1 through 7. Petitioner Exhibits A, D, F, L, M, Q, S, FF and GG. Respondent Exhibits 1 through 6, 9 through 11.

BACKGROUND AND PROCEDURE

2. On or about April 20, 2026, Evelyn Keiling, TTE – The Keiling Living Trust¹ (“Petitioner” or “Ms. Keiling”) filed a one issue petition with the Department which alleged that Lone Mountain Community Association (“Respondent” or “Association”) violated Covenants, Conditions, and Restrictions (“CC&Rs” or “Declaration”) Article 3, Section 3.1 and Design Guidelines Sections 1.5 and 5.1.7.²

² See Packet ADRE HOA Petition Request Form – Keiling.

1 3. The relief requested by Petitioner, other than ordering Respondent to pay
2 to Petitioner the filing fee required by ARIZ. REV. STAT. § 32-2199.01 if Petitioner
3 prevailed, included order Respondent to abide by the Arizona statute specified in the
4 complaint section and order Respondent to abide by the section(s) of the
5 condominium/planned community document(s) specified.³

6 4. On May 19, 2026, the Department sent a HOMEOWNER'S ASSOCIATION
7 ("HOA") NOTICE OF PETITION to Respondent which informed Respondent of the petition
8 initiated against it.⁴ In addition, the petition informed Respondent to send a timely
9 response to the Department and to Petitioner no later than June 8, 2026.⁵

10 5. On or about May 27, 2026, Respondent returned its ANSWER to the
11 Department whereby it denied Petitioner's claims.⁶

12 6. On or about June 8, 2026, the Department referred this matter to the
13 Office of Administrative Hearings ("OAH"), an independent state agency, for an
14 evidentiary hearing to address the issues set forth as follows:

15 The Petitioner's allegation within the petition states, "The Association
16 exceeded its authority by imposing a new mandatory wall color
17 requirement (Behr Pepper Spice) not contained in the CC&Rs and
18 applying it to existing, compliant properties. The CC&Rs including Article
19 3, Section 3.1 (Architectural Control), govern approval of changes but do
20 not mandate a specific wall color. The Design Guidelines provide that the
21 Declaration controls in the event of any conflict (Section 1.5 –
22 Modification; Conflict). The Association adopted a Design Guideline in
23 2020; however, as confirmed in its own February 17, 2026 memorandum,
24 the requirement was not mandatory at that time and no compliance
25 deadline was established. Beginning on or about 2025, the Association
26 imposed a deadline and is now enforcing repainting of previously
27 compliant walls under threat of fine, including under Design Guidelines
28 Section 5.1.7, despite no such requirement existing in the CC&Rs."⁷

29 **THE PARTIES AND GOVERNING DOCUMENTS**

30

³ *Id.*

⁴ See Packet Notice of Petition – Keiling.

⁵ *Id.*

⁶ See Packet Respondent Response to NOP.

⁷ See Packet ADRE HOA Petition Request Form – Keiling.

1 7. Respondent is a homeowners association whose members own properties
2 in the Lone Mountain residential real estate development located in Cave Creek,
3 Maricopa County, Arizona.⁸ The community is managed by First Service Residential.

4 8. The community has approximately 794 homes that included multiple,
5 different home builders which allowed for a variety of different color palettes for the
6 homes per builder.

7 9. Petitioner is a Lone Mountain property owner and a member of the
8 Association subject to the Association's Declaration, governing documents which
9 include its Design Guidelines.

10 10. Petitioner argued in the petition that the Association violated the
11 community's Declaration of CC&Rs⁹ recorded in 2009 and the Design Guidelines.

12 11. The CC&Rs & Design Guidelines provide, in pertinent part, the following
13 sections:

14 **CC&Rs Article 1 – Definitions**

15 Section 1.43 "Project Documents" means this Declaration, any
16 Supplemental Declaration, the Articles, the Bylaws, the Association Rules
17 and the Design Guidelines.

18

19 **CC&Rs Article 3 – Permitted Uses and Restrictions**

20 Section 3.1 – Architectural Control.

21 3.1.1 The provisions of this Section 3.1 shall not be applicable to (i) an in-
22 ground swimming pool installed within a rear yard, (ii) swing sets installed
23 in rear yards without play platforms that do not exceed a height of eight (8)
24 feet from ground level and are placed a minimum of ten (10) feet from all
25 neighboring boundaries, and (iii) any other Improvement that may be
26 permitted without written approval from the Architectural Review
27 Committee as set forth in this Declaration or in the Design Guidelines;
28 however, even though an Owner is not required to obtain written approval
29 from the Architectural Review Committee for the Improvements described
30 in this Subsection 3.1.1, an Owner is required to comply with the Design
Guidelines, including, without limitation, to the extent that the Design
Guidelines set forth guidelines, standards and procedures applicable to
such Improvements. Failure by an Owner to comply with the Design
Guidelines with respect to the Improvements described in this Subsection
3.1.1 shall be deemed a violation of this Declaration in the same manner

⁸ See Packet Notice of Petition – Keiling

⁹ See Respondent Exhibit 1.

as if an Owner had not obtained the prior written approval from the Architectural Review Committee for Improvements that do require prior written approval.

....
CC&Rs Article 5 – The Association; Organization; Membership and Voting Rights; Powers of Board

Section 5.2 Board of Directors and Officers.

... [u]nless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents...

....
Section 5.10 Architectural Review Committee; Design Guidelines

5.10.2 The Board may adopt, amend and repeal architectural guidelines, standards and procedures to be used by the Architectural Review Committee in rendering its decisions (the “Design Guidelines”). The Design Guidelines may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) perimeter and screen wall design and appearance.

Association Design Guidelines – Revised December 16, 2020¹⁰

Article 5 – Other Improvements and Alterations

5.8 – Fences and Walls

5.8.1. . . . No approval is necessary for an Owner to stucco and/or paint the side of the wall facing such Owner’s Residential Unit in the back yard provided the color of paint matches the main color of the Residential Unit. The only stucco and/or paint color permitted for the front yard block walls of the Owner’s Residential Unit is Behr Pepper Spice or its equivalent (the “Community Standard”). Walls painted prior to December 16, 2020 do not need to be repainted; after said date, when an Owner repaints the front yard block walls they must migrate to the Community Standard.

Association Design Guidelines – Revised November 20, 2025¹¹

Article 5 – Other Improvements and Alterations

5.8 – Fences and Walls

¹⁰ See Respondent Exhibit 4.

¹¹ See Respondent Exhibit 2.

5.8.1. . No approval is necessary for an Owner to stucco and/or paint the side of the wall facing towards such Owner's Residential Unit in the back yard provided the color of paint matches the main color of the Residential Unit. The only stucco and/or paint permitted for the front yard side and/or return block walls of the Owner's Lot ("Front Return Walls") is Behr Pepper Spice or its equivalent. All Front Return Walls need to be painted Behr Pepper Spice or its equivalent prior to October 25, 2025.

HEARING EVIDENCE

12. Petitioner, Evelyn Keiling, testified on her own and the Trust's behalf. Respondent presented the testimony of Marcia Hahn, Current Board President. Administrative notice was taken of the Department's electronic file and NOTICE OF HEARING. The substantive evidence of record was as follows:

- a. On December 16, 2020, an Association Open Board Meeting was held.¹² The meeting notes were recorded by Association Secretary Marcia Hahn and stated, in pertinent part, as follows:
 - i. Fences & Wall Colors (Sec 5.8.1 of the Design Guidelines) – ARC committee asked for guidance on colors for interior block walls facing the home which says it must be the color of the house, yet we are not consistent throughout the community. We have walls painted Behr Pepper Spice regardless of home color, walls painted the color of the adjacent house, walls painted gray, walls painted the color of the trim and walls painted an unidentified tan color. The question is to standardize on one or two colors and allow what we have to continue. Steve Reed made a motion to standardize on one color (Behr Pepper Spice or its equivalent); Marcia Han seconded. Motion passed 5-2.¹³
- b. On January 13, 2021, an Association Open Board Meeting was held.¹⁴ The meeting notes were recorded by Association Secretary Ms. Hahn and stated, in pertinent part, as follows:
 - i. Review and approve prior meeting minutes. Bob Phillipps motioned to approve the December 16, 2020 board meeting minutes as drafted. 6 approved; 0 opposed – Motion passed.¹⁵
- c. On March 21, 2024, an Association Board of Directors Meeting – Open Session was held.¹⁶ The meeting notes were recorded by Association Secretary Elaine Parriott and stated, in pertinent part, as follows:
 - i. Under New Business – B. Design Guidelines Discussion – Exterior Front Facing / visible walls at homes

¹² See Petitioner Exhibit D.

¹³ *Id.*

¹⁴ See Respondent Exhibit 10.

¹⁵ *Id.*

¹⁶ See Petitioner Exhibit FF.

1. Requirements of design guideline section 5.8 were discussed at length.
 2. Homeowners were reminded that it is their responsibility to paint front facing and exterior visible walls when repainting their house and that the community color (pepper spice) must be used.
 3. Homeowners were reminded if painting their houses the same color, there is no need to submit an architectural request.
 4. Action was given to the Architectural Committee to review records to understand the extent of wall color compliance existent in the community, as well as the look-back for compliance.¹⁷
- d. On April 22, 2025, an Association Open Session Meeting was held.¹⁸ The meeting notes stated, in pertinent part, as follows:
- i. Reports – D. Architectural Committee Report
 1. Marc Paquette discussed the ongoing efforts made by the Architectural Committee to ensure communitywide compliance regarding the painting of the block walls with Behr Pepper Spice, the established community standard color. Previously walls painted prior to December 16th, 2020, were not required to be repainted with the community standard color until the exterior of the home was repainted. Mr. Paquette informed the members a further stipulation was added to the Design Guidelines requiring homeowners to paint their front-facing block walls with Behr Pepper Spice when repainting the exterior of the home. Despite the inclusion of the stipulation on the exterior painting approval letters, many homeowners continue to paint the walls using the same color rather than painting the walls using Behr Pepper Spice, as specified in Section 5.8 of the Design Guidelines. In response, Marc Paquette proposed amending the last sentence of the Association Design Guidelines Section 5.8 Fences and Walls. A motion was made by Marc Paquette to replace the last sentence of Association Design Guidelines Section 5.8 Fences and Walls to state the only stucco and/or paint color permitted for the front yard block walls of the Owner's Residential Unit is Behr Pepper Spice or its equivalent (the "Community Standard"). All walls need to be painted prior to October 25, 2025. The motion was seconded by Marcia Hahn and opened for discussion. With further discussion to include notices would be issued during

¹⁷ *Id.*

¹⁸ See Petitioner Exhibit GG.

the compliance inspections if the painting has not been completed by the deadline of October 25, 2025, the motion carried unanimously.

ii. New Business – C. Front Facing and Common Homeowner Wall Painting – Behr Pepper Spice

1. The discussion and motion for the painting of the front facing walls was made during the Architectural Committee report.¹⁹

e. On November 20, 2025, an Association Open Session Meeting was held.²⁰ The meeting notes stated, in pertinent part, as follows:

i. New Business – A. Design Guideline Section 5.8.1 – Fences and Walls – Revert to Prior Guidelines

1. Section 5.8, Fences and Walls, from the current Association Design Guidelines dated April 22, 2025, along with Section 5.8 from the 2009 Design Guidelines, were included in the Board packet and placed on the meeting agenda for review at the request of a Board member. A motion was made by Keith Sutcliffe to return to the original Design Guidelines. The motion failed for lack of a second.

ii. New Business – J. Design Guidelines Amendments Board Resolution – Section 5.8 Fences and Walls & 5.10 Flags

1. The Board of Directors reviewed revisions made by CHDB Law to the Association Design Guidelines and Board Resolution to adopt the amended Design Guideline Section 5.8 Fences and Walls and Design Guideline Section 5.10 Flags. A motion was made by Marcia Hahn to amend the Design Guidelines Section 5.8...to clarify language per our attorney's review and recommendation to comply with updated ARS Statute 33-1808 on flags and residential unit clarification language. The motion was seconded...and open for discussion...and clarification on Section 5.8 Fences and Walls to amend the word residential unit as it relates to the fences and walls. The discussion was opened to the Board and opened to the floor for homeowner comment before proceeding with a vote. The motion to amend the Association Design Guidelines Section 5.8 Fences and Wall...as written by CHDB Law carried unanimously.²¹

ADDITIONAL HEARING EVIDENCE

13. Ms. Hahn testified that the December 16, 2020 meeting notes mistakenly had "interior block walls" when the discussion was regarding "exterior" block walls. Ms.

¹⁹ *Id.*

²⁰ See Respondent Exhibit 11.

²¹ *Id.*

1 Hahn testified that the rest of the notes clearly referred to the exterior block walls. Ms.
2 Hahn testified that homeowners never needed architectural approval to repaint their
3 homes (residential units) if the home is being painted the same color. Ms. Hahn
4 contended that front facing walls and fences are different than “residential units” and
5 needed architectural approval to paint those walls in 2020 and the paint must be Behr
6 Pepper Spice. Ms. Hahn testified that a deadline to paint homeowner exterior block
7 walls in Behr Pepper Spice was designated on October 25, 2025 and then the deadline
8 was extended to the end of March 2026. Ms. Hahn argued that the specific paint color
9 would not be in the CC&Rs but would be and are included in the Design Guidelines.
10 Ms. Hahn testified that the 2020 and 2025 Design Guidelines²² do not have a section
11 5.1.7 as alleged in Petitioner’s petition. Ms. Hahn further testified that CC&Rs 5.10.2
12 allows the Board to adopt and amend design guidelines and to change exterior color
13 schemes. Ms. Hahn testified that the design guidelines over the years have been
14 amended approximately 38 times and that this practice was customary association
15 business. Lastly, Ms. Hahn testified that out of the 794 homes in the community only
16 four homes have not been painted yet.

17 14. Ms. Keiling testified that she had painted her front-facing walls Behr
18 Pepper Spice under protest and to alleviate any future fines she may receive. Ms.
19 Keiling testified that since her home has over 500 square feet of forward-facing wall that
20 her walls cost around \$3,000.00 compared to other homeowners that paid less because
21 they have less exterior block walls. Ms. Keiling’s testimony provided reflected what she
22 argued in her closing arguments below.

23 **CLOSING ARGUMENTS**

24 Petitioner’s argument

25 15. Petitioner argued that her one fundamental question was where in the
26 CC&Rs does the board derive express legal authority to mandate that existing
27 homeowners repaint their front-facing block walls a specific color at their own expense.
28 Petitioner argued that the Association has failed to show that they are granted this
29 power. Petitioner argued that the design guidelines are strictly subordinate

30 ²² See Respondent Exhibit 2 at page 12 and Exhibit 4 at page 9-10.

1 administrative rules and cannot expand the Board power beyond the CC&Rs. Petitioner
2 argued that CC&Rs 3.1 limits architectural authority strictly to reviewing proposed
3 physical modifications submitted by homeowners and grants no authority to reinvent
4 retroactive communitywide paint mandates. Petitioner pondered that if the Board could
5 use unrecorded guidelines to force compliance into costly aesthetic overhauls its
6 authority would be limitless and could mandate costly projects for homeowners.
7 Petitioner argued that the corporate records which include the meeting minutes were
8 unreliable with forward-facing walls listed as “interior block walls.” Petitioner requested
9 that the Tribunal enter an order vacating and rescinding monetary fines, declare Behr
10 Pepper Spice as a front-facing wall mandate was an unauthorized administrative
11 overreach unsupported by the CC&Rs or official corporate board minutes, and lastly
12 reaffirm that homeowners have the right to paint and maintain their front-facing walls to
13 match the original, builder-approved body color of their homes without the architectural
14 committees interference.

15 Respondent's argument

16 16. Respondent asserted that the CC&Rs expressly authorized the Board to
17 adopt, amend, and repeal the Design Guidelines and specifically contemplates
18 amendments governing exterior color schemes, exterior finishes and materials, and
19 perimeter and screen wall design and appearance. Respondent argued that Petitioner's
20 continued request that this Tribunal rule on whether the Board had the authority to act
21 was not before the jurisdiction of this Tribunal. Respondent contended that Petitioner
22 wanted the Tribunal to completely ignore the design guidelines and sections 5.2 and
23 5.10 of the CC&Rs that expressly permit the Board without a membership vote to adopt
24 and amend the design guidelines which the Board has done thirty-eight times to date.
25 Respondent provided that Petitioner did not specifically address any violation of the
26 CC&Rs under subsection Article 3, subsection 3.1. Respondent contended that the
27 CC&Rs under Article 3.1 are about owners and what process they must follow to get
28 permission to make improvements pursuant to the CC&Rs and the design guidelines.
29 Respondent argued that under the Design Guidelines 1.5, the Board can modify them
30 from time to time as deemed necessary at their sole discretion. Respondent argued

1 that Petitioner was correct that in the event there was any conflict between the
2 declaration and the design guidelines, then the declaration shall control. However,
3 Respondent further argued that there was no conflict that existed because the CC&Rs
4 which do not list specific colors and would be impossible to do in a recorded document
5 and that was why the design guidelines exist. Lastly, Respondent argued that Petitioner
6 listed in her petition that the Association was in violation of Design Guidelines 5.1.7,
7 however, that subsection does not exist. Respondent requested that the Tribunal
8 dismiss Petitioner's petition.

9 **CONCLUSIONS OF LAW**

10 1. The Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and
11 32-2199 *et seq.*, regarding a dispute between an owner and a planned community
12 association. The owner or association may petition the department for a hearing
13 concerning violations of community documents or violations of the statutes that regulate
14 planned communities as long as the petitioner has filed a petition with the department
15 and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

16 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-
17 2199.01(D), 32-2199.02, and 41-1092 *et seq.*, OAH has the authority to hear and
18 decide the contested case at bar. OAH has the authority to interpret the contract
19 between the parties.²³

20 3. In this proceeding, Petitioner bears the burden of proving by a
21 preponderance of the evidence that Respondent violated the aforementioned CC&Rs
22 Article 3, Section 3.1 and the Design Guidelines Sections 1.5 and 5.1.7.²⁴

23 4. A preponderance of the evidence means "proof which leads the [trier of
24 fact] to find that the existence of the contested fact is more probable than its
25 nonexistence."²⁵

26 5. On August 25, 2026, this Administrative Law Judge issued an Order in
27 which OAH does not have jurisdiction to adjudicate claims arising out of ARIZ. REV.

28 ²³ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

29 ²⁴ See ARIZ. ADMIN. CODE R2-19-119.

30 ²⁵ *In re William L.*, 211 Ariz. 236, 238 (App. 2005) (quoting *Matter of Appeal in Maricopa Juv. Action No. J-84984*. 138 Ariz. 282, 283 (1983)).

1 STAT. § 10-3304 or any law falling under Chapter 26 of Title 10 under the ARIZ. REV.
2 STAT. The Tribunal will not adjudicate any challenge on the Association's authority to
3 act.

4 6. In this case, Petitioner argued that the Association violated CC&Rs Article
5 3, Section 3.1 which had thirteen subsections. Petitioner did not provide the specific
6 subsection that she alleged the Association violated. As such, Petitioner failed to meet
7 her burden on this allegation. In fact, CC&Rs Article 5, Section 5.10, subsection 5.10.2
8 stated that the Board may adopt, amend and repeal architectural guidelines, standards
9 and procedures to be used by the Architectural Review Committee ("ARC") in rendering
10 its decisions (the "Design Guidelines").²⁶ The subsection further stated that the Design
11 Guidelines may include, without limitation, provisions regarding (v) requirements
12 concerning exterior color schemes, exterior finishes, and materials. The Declaration is
13 the overarching recorded document that vests the Board with the mandate to establish
14 an ARC. The ARC then has established design guidelines which govern if the
15 improvement is not specified in the CC&Rs.

16 7. Secondly, Petitioner argued that the Association violated the Design
17 Guidelines section 5.1.7 which does not exist in either the design guidelines from 2020
18 or 2025. Hence, Petitioner failed to establish that the Association was in violation of a
19 non-existent guideline. Next, Petitioner alleged that the Association violated the Design
20 Guidelines section 1.5, however, that was established above that the Design Guidelines
21 control when the CC&Rs are silent on the specifics of an improvement. Therefore,
22 Petitioner has failed to establish that Respondent was in violation of the Design
23 Guidelines. In fact, Section 5.8 of the Design Guidelines expressly provided that
24 homeowners front return walls need to be painted Behr Pepper Spice.

25 8. Petitioner argued not only about what was provided in her petition but also
26 arguments outside of the petition and referenced several different cases which have no
27 bearing in deciding this matter. Hence, Petitioner failed to establish that Respondent
28 acted in violation of the Association's governing documents.

29 ²⁶ See Respondent Exhibit 1.

9. Therefore, the undersigned Administrative Law Judge concludes that, because Petitioner failed to meet her burden of proof that Respondent committed the alleged violations, her petition must be denied.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition be **DENIED**.

IT IS FURTHER ORDERED pursuant to ARIZ. REV. STAT. § 32-2199.02(A), Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. § 32-199.01.

NOTICE

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

Done on this day, September 21, 2026.

/s/ Nicole Robinson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile September 21, 2026 to:

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