

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

JERRY A. GROSSMAN,

Petitioner,

vs.

GAINEY RANCH COMMUNITY ASSOCIATION

Respondent.

No. 08F-H078011-BFS

GAINEY RANCH COMMUNITY ASSOCIATION,

Petitioner,

vs.

JERRY A. GROSSMAN,

Respondent.

No. 08F-H078012-BFS

ADMINISTRATIVE LAW JUDGE DECISION

HEARING: April 24, 2008

APPEARANCES: Jerry Grossman on his own behalf; Burton C. Cohen, Esq. on behalf of Gainey Ranch Community Association

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

Procedural Background

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 This is a consolidated matter wherein Jerry Grossman ("Mr. Grossman") filed a
2 Petition with the Department of Fire, Building and Life Safety ("Department")
3 complaining that the Gainey Ranch Community Association ("Association") was
4 attempting to force him to repaint his home and front door.

5 The Association filed a Petition with the Department alleging that Mr. Grossman
6 violated the governing documents of the Association by having his home and front door
7 painted colors not approved by the Association and for not having the Association's
8 approval for painting Mr. Grossman's home and front door.

9 Ruling

10 The governing documents of the Association require that before a home is
11 painted a color different than what exists, it must seek approval for the Association's
12 Architectural Committee. Mr. Grossman painted his home a color that was not
13 approved by the Association and he did not submit an application to the Association's
14 Architectural Committee for such approval, as required.

15 Mr. Grossman painted his front door dark brown and he did not submit an
16 application to the Association's Architectural Committee for approval. The community
17 within Gainey Ranch where Mr. Grossman resides generally has homes with stained
18 front doors consisting of light or medium oak. Mr. Grossman's painting of his front door
19 and home were exterior changes that required approval from the Association's
20 Architectural Committee.

21 **FINDINGS OF FACTS**

- 22 1. At all times material to this matter, Mr. Grossman lived at Lot 142 of the Greens,
23 a community located within Gainey Ranch. The Greens has its own Board of Directors
24 and Architectural Committee.
- 25 2. The Gainey Ranch community has its own Board of Directors ("Association's
26 Board of Directors") and its own Architectural Committee (Association's Architectural
27 Committee") which have superior authority over the Greens' Board of Directors and
28 Greens' Architectural Committee.
- 29 3. It is undisputed that Article IV, Section (2)(a) of the Association's Certificate of
30 Amendment and Restatement of Master Declaration of Covenants, Conditions,

Restrictions, Assessment, Charges, Servitudes, Liens Reservations and Easements for
Gainey Ranch ("CC&R's") provides in pertinent part that "no changes to alterations
which in any way alters the exterior appearance of any property within Gainey Ranch
from its natural or improved state existing on the date of a tract Declaration for such

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1 property was first recorded shall be made or done without prior approval of the
2 [Association's] Architectural Committee. No building wall fence residence or other
3 structure shall be altered including any building, fence, wall or other structure including
4 exterior color scheme shall be subject to prior approval of the [Association's]
5 Architectural Committee."

6 4. Mr. Grossman's residence located on Lot 42 of the Greens previously was pink in
7 color. In September or October 2007, Mr. Grossman arranged for the home to be
8 repainted using Sterling Place as its color. Sterling Place was not approved by the
9 Association's Architectural Committee as a color to be used for the exterior of homes
10 but was approved as a color that could be applied to the interior of walls.

11 5. In September or October 2007, Mr. Grossman had his front door painted dark
12 brown. Although Mr. Grossman could not recall what the door looked like prior to being
13 painted, Fred Thielen ("Mr. Thielen"), the Executive Director of the Association, testified
14 that, generally, the front doors of the Greens' homes were built by the builder as stained
15 doors of light or medium oak.

16 6. Mr. Grossman did not seek prior approval of the Association's Architectural
17 Committee before he had his home and front door painted in September or October
18 2007.

19 7. At a meeting of the Greens' Board of Directors (Exhibit C) the Board noted that
20 Sterling Place is approved for entrance walls but not approved as a house color by the
21 Association's Architectural Committee though it falls within the colors used in the
22 Greens community. It was noted that the Greens' Board of Directors and Greens'
23 Architectural Committee had approved the use of Sterling Place as a color for buildings.
24 Although the Greens' Board of Directors agreed to support Mr. Grossman with respect
25 to the Association's Board of Directors and Architectural Committee it also admonished
26 Mr. Grossman for taking such action without seeking approval of the Association's
27 Architectural Committee.

28 8. Patrick Collins ("Mr. Collins"), a current member of the Association's Board of
29 Directors, and previously was a member of the Greens' Board of Directors and Greens'
30 Architectural Committee, testified that Article 1, Section 4(a)(2) of the Association's

1 Architectural Guidelines and Standards (“Guidelines”) provides that stucco can be
2 painted with a color approved by the Association’s Architectural Committee.

3 9. Mr. Collins testified as to his belief that because buildings and walls around the
4 perimeter of the Green are made of stucco and Sterling Place was an approved color
5 for stucco, buildings can be painted using Sterling Place. However, Mr. Collins
6 acknowledged that the Greens’ Board of Directors sought approval from the
7 Association’s Board of Directors for approval to use Sterling Place for buildings and was
8 unsuccessful in that effort. Mr. Collins also acknowledged that Sterling Place was not an
9 approved color for the exterior side of the Greens’ perimeter walls and was only
10 approved for the interior stucco and the entryway to the Greens.

11 10. Mr. Grossman testified that because he believed that Sterling Place was an
12 approved color to be used on stucco walls as well as the exterior of his home, he did not
13 have to obtain prior approval from the Association’s Architectural Committee.

14 11. Mr. Grossman also testified that he was unaware of any provision in the CC&Rs
15 or any Association governing document (Articles of Incorporation, CC&Rs, By-Laws or
16 Rules or Regulations) that addressed the front door. He also stated that homes exist
17 within the Greens community that have cherry wood, metal or painted front doors other
18 than stained oak.

19 12. Mr. Grossman’s contention of selective enforcement and harassment was raised
20 and determined to not be within the scope of the hearing.¹

21 13. Mr. Thielen, who also sits on the Association’s Architectural Committee, testified
22 that if a homeowner within the Association wants to repaint his/her home with an
23 approved color prior approval of the Association’s Architectural Committee is not
24 necessary.

25 14. Mr. Thielen testified that Article IV, Section 2(a) of the CC&Rs requires the
26 approval of the Association’s Architectural Committee to change the exterior of the
27 home, which includes the home’s front door. Additionally, Mr. Thielen referenced Article
28 IV, Section 2(A) of the CC&Rs, which require that the home be as it existed when built

29 ¹ Although Mr. Grossman raised harassment in his response to the Association’s Petition, harassment is
30 not a defense but an issue that could have been but was not specifically raised in Mr. Grossman’s
Petition.

1 by the builder subject to a change as approved by the Association's Architectural
2 Committee. According to Mr. Thielen, that provision encompasses the front doors of
3 homes.

4 **CONCLUSIONS OF LAW**

5 1. Pursuant to his Petition, Mr. Grossman must prove by a preponderance of the
6 evidence that the Association violated the provisions of Guideline Section 4, Article 1,
7 Section 2.

8 2. Pursuant to its Petition, the Association must prove by a preponderance of the
9 evidence that Mr. Grossman violated the provisions of Article IV, Section 2(a) of the
10 CC&Rs.

11 3. A "preponderance of the evidence is evidence which is of greater weight or more
12 convincing than the evidence which is offered in opposition to it; that is, evidence which
13 as a whole shows that the fact sought to be proved is more probable than not." BLACK'S
14 LAW DICTIONARY 1182 (6th ed. 1990).

15 4. The Association had the authority to approve colors of paint for the exterior of the
16 home, walls, and fences and to seek compliance from homeowners with respect to
17 changes of the exterior of their homes and front doors.

18 5. The Association's Architectural Committee did not approve Sterling Place as a
19 color for the exterior side of the Greens' perimeter walls nor did it approve Sterling
20 Place as a color for homes. Consequently, Mr. Grossman's argument that because
21 Sterling Place was approved for stucco, which, he believed, includes buildings such as
22 homes, is not persuasive.

23 6. The weight of the evidence of record established that Article IV, Section 2(a) of
24 the CC&Rs requires that homes be as they existed when built by the builder subject to
25 change by obtaining approval from the Association's Architectural Committee.

26 7. Mr. Grossman failed to prove by a preponderance of the evidence that the
27 Association violated the provisions of Guideline Section 4, Article 1, Section 2 as
28 alleged in his Petition.

29 8. The Association proved by a preponderance of the evidence that Mr. Grossman
30 violated Article IV, Section 2(a) of the CC&Rs by painting the exterior of his home and

1 the front door of the home with colors not approved by the Association's Architectural
2 Committee without obtaining prior approval of the Association's Architectural
3 Committee.

4 **ORDER**

5 **IT IS ORDERED** that no action is required of the Association with respect to Mr.
6 Grossman's Petition;

7 **IT IS FURTHER ORDERED** that Mr. Grossman must comply with Article IV,
8 Section 2(a) of the CC&Rs and shall, within 60 days of the effective date of this Order,
9 paint the exterior of his home with a color approved by the Association's Architectural
10 Committee and restore the front door of his home to be stained light or medium oak;
11 and

12 **IT IS FURTHER ORDERED** that within forty days of the effective date of this
13 Order, Mr. Grossman shall reimburse the Association its filing fee of \$550.00.²

14 Done this day, May 13, 2008.

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16 _____
17 Lewis D. Kowal
18 Administrative Law Judge

19 Original transmitted by mail this
20 ____ day of _____, 2008, to:

21
22 Department of Fire Building and Life Safety - H/C
23 Robert Barger, Director
24 ATTN: Debra Blake
25 1110 W. Washington, Suite 100
26 Phoenix, AZ 85007

27 Jerry Grossman
28 7525 Gainey Ranch Road, #142
29 Scottsdale, AZ 85258

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² This Order is the final administrative decision and is not subject to a request for rehearing. The Order is enforceable through contempt of court proceedings. A.R.S. § 41-2198.02(B).

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By _____