

1 **Final agency action regarding decision below:**

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3 **ALJFIN ALJ Decision final by statute**

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5 **STATE OF ARIZONA**  
6 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

7  
8 MARJORIE H. RODGERS,

9 Petitioner,

10  
11 vs.

12 VILLA CAPISTRANO RANCHOS, INC.,

13 Respondent.

**No. 08F-H088011-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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17 **HEARING:** May 27, 2008

18 **APPEARANCES:** Petitioner Marjorie H. Rodgers appeared personally. Jason  
19 E. Smith appeared for Respondent Villa Capistrano Ranchos, Inc.

20 **ADMINISTRATIVE LAW JUDGE:** Michael G. Wales

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23 Based upon the evidence of record, the Administrative Law Judge makes the  
24 following Findings of Fact, Conclusions of Law and Order:

25 **FINDINGS OF FACT**

26 1. Marjorie H. Rodgers ("Petitioner") is the owner of record of an attached  
27 home (also known as a "rancho") at 1029 W. Mission Lane, in the Villa Capistrano  
28 Ranchos Community (the "Community") in Phoenix, Arizona. Rancho ownership is  
29 subject to the planned community governing documents recorded by, or promulgated  
30 by, Respondent Villa Capistrano Ranchos, Inc. (herein "Respondent Association" or  
"Association"). An owner of a rancho in the Community automatically becomes a  
member of the Respondent Association, and is bound by the governing documents of

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1 the Association, by virtue of being a purchaser of, or subsequent purchaser of, any  
2 rancho within the Community. Likewise, the Association is bound by the governing  
3 documents in its administration of the affairs of the Association, said administration  
4 conducted by, and through, the Association's Board of Directors.

5 2. On March 13, 2008, Petitioner filed a Petition, pursuant to A.R.S. §41-  
6 2198.01(B), with the Arizona Department of Fire, Building and Life Safety alleging, in a  
7 single count, that the Respondent Association had denied her the right to procure  
8 insurance on her rancho in lieu of the Association-provided, and individually assessed,  
9 insurance and, in doing so, the Association violated Section 15 of the Declaration of  
10 Covenants, Conditions and Restrictions dated October 6, 1966, as amended on April  
11 24, 1967 (the "CC&Rs"), and violated A.R.S §§33-1201(B) and 33-1253(B), state  
12 statutes governing condominium communities. Petitioner sought an order compelling  
13 Respondent Association to comply with Section 15 of the CC&Rs and to allow her to  
14 personally insure her rancho in lieu of the Association-provided insurance. Petitioner  
15 also sought imposition of a civil penalty against Respondent Association, and the return  
16 of her \$550.00 filing fee.<sup>1</sup>

17 3. Respondent Association filed a Response to the Petition on April 3, 2008  
18 alleging the Community is not a condominium community and further denying it was in  
19 violation of Section 15 of the CC&Rs. The matter was set for hearing before the Office  
20 of Administrative Hearings.

21 4. At the inception of the hearing, Petitioner conceded that the Community is  
22 a planned unit community rather than a condominium community, and that A.R.S §§33-  
23 1201(B) and 33-1253(B) do not apply to Respondent Association. Thus, the alleged  
24 violations of A.R.S §§33-1201(B) and 33-1253(B) were dismissed by Petitioner.  
25 Therefore, the sole issue remaining for this tribunal's consideration became: Whether  
26 the Association violated Section 15 of the CC&Rs by informing Petitioner that the Board  
27 of Directors would not allow her to use her own policy of insurance in lieu of  
28 Association-provided insurance.

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29 <sup>1</sup> At hearing, Petitioner also requested this tribunal absolve her from having to pay the \$200 assessment  
30 she had been invoiced for the portion of the Association-obtained insurance that was applicable to her  
rancho.



1 that the contention is more probably true than not.”<sup>4</sup> A preponderance of the evidence is  
2 defined as “[t]he greater weight of the evidence, not necessarily established by the  
3 greater number of witnesses testifying to a fact but by evidence that has the most  
4 convincing force; superior evidentiary weight that, though not sufficient to free the mind  
5 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one  
6 side of the issue rather than the other.”<sup>5</sup>

7 3. In regards to the allegation by Petitioner that Respondent Association violated  
8 Section 15 of the CC&Rs, Petitioner failed to meet the requisite burden of proof. The  
9 Association must comply with the CC&R’s unless an exception exists that allows non-  
10 compliance. Section 15 of the CC&Rs states “The Board of Directors, or its duly  
11 authorized agent, *shall* have the authority to and *shall* obtain insurance for all the  
12 buildings, including all ranchos, *unless* the owners thereof shall have supplied proof of  
13 adequate coverage...”. The exemption language of Section 15 of the CC&Rs allows the  
14 Board of Directors to avoid purchasing insurance on all buildings only if “*the owners*  
15 *thereof*” (which is preceded by the language “*of all ranchos*”) have supplied proof of  
16 adequate coverage. This tribunal concludes that a plain reading of the exemption  
17 language of Section 15 requires submission of an acceptable policy, or policies, of  
18 insurance purchased by all owners of ranchos, not just one owner, in order for the  
19 Association to take advantage of the exemption from the insurance requirements  
20 imposed upon the Board of Directors by Section 15 of the CC&Rs.

21 4. This tribunal further concludes that the language of the limited exemption  
22 in Section 15 is permissive rather than mandatory. In other words, the Board of  
23 Directors may, but is not required to, allow all of the owners to provide a policy, or  
24 policies, of insurance to the Board of Directors for review. Then, if the Board of  
25 Directors has determined, to its complete satisfaction, that the owners’ policies provide  
26 sufficient coverage for all buildings and all relevant hazards, the Board of Directors may,  
27 but is not required to, allow the owners’ policy, or policies, to serve as the requisite  
28 insurance coverage on all buildings. In summary, Section 15 imposes a duty and

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30 <sup>4</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>5</sup> BLACK’S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

1 obligation on the Association but does not confer a right or privilege on an individual  
2 owner or group of owners.

3 5. Petitioner relies on the language concerning loss in Section 15 of the  
4 CC&Rs, which states: *"In the event of damage or destruction by fire or other casualty to  
5 any rancho or other property covered by insurance written in the name of the individual  
6 buyer, said buyer shall, upon receipt of the insurance proceeds, contract to repair or  
7 rebuild such damages or destroyed portions of the rancho...in a good workmanlike  
8 manner..."*. This tribunal concludes that such language does not conflict with the  
9 determination that the CC&Rs require *all* owners to produce a policy, or policies, of  
10 insurance in order for the Board of Directors to take advantage of the exemption from  
11 the insurance requirements of Section 15. The language cited by Petitioner simply sets  
12 forth the duties imposed upon an owner to properly repair damaged areas of a rancho  
13 with the insurance proceeds received from his or her own policy *written in his or her*  
14 *own name* after a loss.

15 6. Although Respondent prevailed in this matter, an administrative proceeding  
16 is not an "action" such as to make attorney's fees awardable under A.R.S. §§ 33-  
17 1807(H) or 12-341.01.<sup>6</sup> Respondent's request for attorneys' fees must therefore be  
18 denied.

19 7. Petitioner is not the prevailing party and is not entitled to be reimbursed  
20 the cost of her filing fee under A.R.S. § 41-2198.02(A).

21 **ORDER**

22 Based on the foregoing,

23 **IT IS ORDERED** dismissing the Petition against Respondent Association Villa  
24 Capistrano Ranchos, Inc. in its entirety in Case No. HO 08-8/011

25 **IT IS FURTHER ORDERED** denying Respondent's request for attorney's fees.  
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30 <sup>6</sup> See *Semple v. Tri-City Drywall, Inc.*, 172 Ariz. 608, 611-612, 838 P.2d 1369, 1372-73 (App. 1992)  
(Prevailing party in administrative claim before Registrar of Contractors was not entitled to attorney's  
fees from its opponent under A.R.S. § 12-341.01(A) because administrative hearing is not an "action").

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Pursuant to A.R.S. §41-2198.04(A), this Order is the final administrative decision and it is not subject to a request for rehearing.

Done this day, May 28, 2008.

Office of Administrative Hearings

\_\_\_\_\_  
Michael G. Wales  
Administrative Law Judge

Original transmitted by mail this  
\_\_\_\_ day of \_\_\_\_\_, 2008, to:

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