

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

2
3 **ALJCERT ALJ decision certified as final**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 SHARON OBERRITTER,

8 Petitioner,

9
10 VS

11 SCOTTSDALE TRAILS,

12 Respondent.

No. 15F-H1516003-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

13
14
15
16
17 **HEARING:** December 9, 2015, at 8:00 a.m.

18 **APPEARANCES:** Sharon Oberritter (hereinafter "Petitioner" or "Ms. Oberritter")
19 appeared on her own behalf. Scottsdale Trails Association (hereinafter "Respondent" or
20 "Scottsdale Trails") was represented by its attorney, Mark Sahl.

21 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

22
23
24 Evidence and testimony were presented and the following Findings of Fact,
25 Conclusions of Law and Recommended Order are made:

26 **FINDINGS OF FACT**

27 **Background and Procedure**

28 1. The Department of Fire, Building and Life Safety (the "Department") is
29 authorized by statute to receive Petitions for Hearings from members of homeowners'
30 associations and from homeowners' associations in Arizona.

2. Respondent is a homeowners' association located in Scottsdale, Arizona.

1 the change. Mr. Oberritter said that he was concerned with a deterioration in the
2 appearance of Scottsdale Trails units which would lower property values for all of the
3 owners.

4 9. Ms. Oberritter testified that she had been a member of the Board for ten
5 years. The Petitioner stated that until 2012 the Board consisted of five members. The
6 Petitioner said that in 2012 the Board was increased to seven members. The Petitioner
7 said that the change in the rules concerning patios in the community was approved by
8 the Board in a 4 to 3 vote. The Petitioner opined that Section 16.2 of the CC&Rs cannot
9 be changed by the Board. Ms. Oberritter said that the rule change must be voted on by
10 owners of Trails and that two-thirds of the owners must approve the change.

11 10. Michael J. Vukson (hereinafter "Mr. Vukson") testified that he is a member of
12 the Board. Mr. Vukson said that he was elected to the Board in 2012. Mr. Vukson said
13 that in June 2014, the Board voted to modify the language of Respondent's Rules and
14 Regulations at Section 4, paragraph 2, to comply with Respondent's CC&Rs. Mr.
15 Vukson opined that the change was essentially a semantic change that hardly changed
16 the wording of Section 4, paragraph 2.

17 **BYLAWS AND CC&RS REFERENCED AT THE HEARING**

18
19 1. Article 16, Section 16.2 of Respondent's CC&Rs provides, in relevant part,
20 as follows:

21 Except for customary patio furniture and reasonably sized
22 potted plants on patios or balconies, nothing shall be stored,
23 placed, erected, hung or permitted on any patio, balcony,
24 parking space, fenced yard area, roof, the Association
25 controlled Common Elements or exteriors of any Units.
26 Exterior painting or decorating of a Unit, including without
27 limitation canopies and awnings, must have prior written
28 approval of the Board, which may, in making its decision,
29 consider the general compatibility or any such proposed
30 decorating with other Units and the surrounding residential
areas in genera....²

² See Respondent's Exhibit 1 (CC&Rs for Scottsdale Trails).

1 vote by the owners of the residence in Scottsdale Trails. This Tribunal further
2 concludes that Ms. Oberritter failed to satisfy her burden of proof for her petition.

3 **RECOMMENDED ORDER**

4 In view of the foregoing, it is ORDERED that no action is required of Respondent
5 in this matter and that the petition is dismissed.

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

9 Done this day, December 23, 2015.

10
11 /s/ M. Douglas
12 Administrative Law Judge

13
14 Transmitted electronically to:

15 Debra Blake, Interim Director
16 Department of Fire Building and Life Safety
17
18
19
20
21
22
23
24
25
26
27
28
29
30