

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

2  
3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 Thomas J Van Dan Elzen,  
8 Petitioner,  
9 vs.  
10 Carter Ranch Homeowners Association,  
11 Respondent.

**No. 19F-H1919071-REL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

12 **HEARING:** September 9, 2019

13 **APPEARANCES:** Petitioner Thomas J. Van Dan Elzen appeared on behalf of  
14 himself. Augustus Shaw, Esq. appeared on behalf of Respondent Carter Ranch  
15 Homeowners Association.

16 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

17  
18 **FINDINGS OF FACT**

19 1. On July 16, 2019, the Arizona Department of Real Estate (Department)  
20 issued a Notice of Hearing setting the above-captioned matter for hearing on  
21 September 9, 2019 at the Office of Administrative Hearings in Phoenix, Arizona.

22 2. The Notice of Hearing shows that Petitioner Thomas J. Van Dan Elzen  
23 alleges that Respondent Carter Ranch Homeowners Association (Carter Ranch)  
24 violated Arizona Revised Statutes § 33-1808.

25 3. Mr. Van Dan Elzen appeared and testified on his own behalf. Carter Ranch  
26 was represented by counsel but presented no witnesses.

27 4. On or about June 14, 2019, Mr. Van Dan Elzen filed with the Department  
28 the petition that gave rise to this matter.

29 5. Mr. Van Dan Elzen displayed a Trump 2020 flag on flagpole in his front  
30 yard.



1 which as a whole shows that the fact sought to be proved is more probable than not."

2 BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

3 3. A.R.S. § 33-1808, at all relevant times, provided in pertinent part:

4 A. Notwithstanding any provision in the community  
5 documents, an association shall not prohibit the outdoor  
6 display of any of the following:

7 1. The American flag or an official or replica of a flag of the  
8 United States army, navy, air force, marine corps or coast  
9 guard by an association member on that member's property  
10 if the American flag or military flag is displayed in a manner  
11 consistent with the federal flag code (P.L. 94-344; 90 Stat.  
12 810; 4 United States Code sections 4 through 10).

13 2. The POW/MIA flag.

14 3. The Arizona state flag.

15 4. An Arizona Indian nations flag.

16 5. The Gadsden flag.

17 C. Notwithstanding any provision in the community  
18 documents, an association shall not prohibit the indoor or  
19 outdoor display of a political sign by an association member  
20 on that member's property, except that an association may  
21 prohibit the display of political signs earlier than seventy-one  
22 days before the day of an election and later than three days  
23 after an election day. An association may regulate the size  
24 and number of political signs that may be placed on a  
25 member's property if the association's regulation is no more  
26 restrictive than any applicable city, town or county ordinance  
27 that regulates the size and number of political signs on  
28 residential property. If the city, town or county in which the  
29 property is located does not regulate the size and number of  
30 political signs on residential property, the association shall  
not limit the number of political signs, except that the  
maximum aggregate total dimensions of all political signs on  
a member's property shall not exceed nine square feet. For  
the purposes of this subsection, "political sign" means a sign  
that attempts to influence the outcome of an election,  
including supporting or opposing the recall of a public officer  
or supporting or opposing the circulation of a petition for a

1 ballot measure, question or proposition or the recall of a  
2 public officer.

3 4. Petitioner had not established that the Association improperly adopted the  
4 Flag Display Rule under its CC&Rs.

5 5. Moreover, Petitioner has not alleged that Carter Ranch violated  
6 A.R.S. § 33-1808.

7 6. Mr. Van Dan Elzen's petition should be dismissed and the Respondent be  
8 deemed to be the prevailing party in this matter.

9 **ORDER**

10 **IT IS ORDERED** that Petitioner Thomas J. Van Dan Elzen's petition is dismissed.

11 **NOTICE**

12 **Pursuant to ARIZ. REV. STAT. section 32-2199.02(B), this Order is binding on the**  
13 **parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. section 32-**  
14 **2199.04. Pursuant to ARIZ. REV. STAT. section 41-1092.09, a request for rehearing**  
15 **in this matter must be filed with the Commissioner of the Department of Real**  
16 **Estate within 30 days of the service of this Order upon the parties.**

17 Done this day, September 30, 2019.

18 /s/ Velva Moses-Thompson  
19 Administrative Law Judge

20 Transmitted electronically to:

21 Judy Lowe, Commissioner  
22 Arizona Department of Real Estate

23 Transmitted through US Mail to:

24 Thomas J. Van Dan Elzen  
25 1217 W. Central Ave.  
26 Coolidge, AZ 85128

27 Dustin Snow  
28 SNOW PROPERTY SERVICES  
29 4135 S POWER RD, #122  
30 MESA, AZ 85212

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Augustus H. Shaw IV  
Shaw & Lines LLC  
4523 E Broadway Rd.  
Phoenix, AZ 85040