

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

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

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

6
7 Haining Xia,

No. 21F-H2120016-REL

8 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 v.
11 Dorsey Place Condominium Association,

12 Respondent.

13

HEARING: January 7, 2021

14
15 **APPEARANCES:** Petitioner Haining Xia appeared on his own behalf. Nick Nogami, Esq.
16 represented Respondent Dorsey Place Condominium Association.

17 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

18
19 **FINDINGS OF FACT**

20 1. On or about September 21, 2020, Haining Xia (“Petitioner”) filed a
21 Homeowners Association (“HOA”) Dispute Resolution Petition (“Petition”) with the
22 Arizona Department of Real Estate (“Department”) against Dorsey Place Condominium
23 Association (“Respondent”). Petitioner asserted a violation of Respondent’s Bylaws
24 Articles 3.3., 4.1, and 4.4.

25 2. On or about November 20, 2020, the Department issued a Notice of Hearing
26 in which it set forth the issue for hearing as follows:

27 Respondent never elected the board at its Annual Members
28 Meetings. In the notices for Annual Members Meeting of 2018 and
29 2019, board election was not even on the agendas. This is in direct
30 violation of HOA Bylaws Article 3.3, Article 4.1 and Article 4.4.

1 3. At the hearing, Petitioner testified on his own behalf. Respondent did not
2 present any witnesses, however, its counsel presented argument.

3 4. Respondent had previously submitted to the Office of Administrative
4 Hearings a Motion to Dismiss for lack of jurisdiction in pertinent part as follows:

5 The OAH only has jurisdiction to hear disputes between a “Unit
6 owner” and a “Condominium” as such terms are defined by A.R.S.
7 §33-1202(10) and (23). See A.R.S. §32-2199.01(A) (“For a dispute
8 between an owner and a condominium association or planned
9 community association that is regulated pursuant to title 33...”).
10 Accordingly, the Association must be a “Condominium” in order for
11 the OAH to have jurisdiction over any dispute between these
12 parties. However, the Association is not a Condominium because its
13 Condominium status was terminated in 2019 pursuant to a
14 “Condominium Termination Agreement” recorded on April 9, 2019.
15 A copy of this document is attached hereto as **Exhibit A**. As the
16 Condominium was terminated in April 2019, the Association no
17 longer meets the legal requirements of A.R.S. §33-1202(10) and
18 therefore the OAH does not have jurisdiction over this dispute. In
19 fact, the subject property is currently being utilized as an apartment
20 complex, making the Petitioner’s claims moot and not within the
21 OAH’s jurisdiction.

22 5. The Administrative Law Judge issued a Minute Entry on January 4, 2021,
23 addressing Respondent’s Motion to Dismiss as well as Petitioner’s Response thereto, as
24 follows:

25 . . . having reviewed Respondent’s Motion to Dismiss (“Motion”),
26 Petitioner’s Response to Motion to Dismiss, and Respondent’s Reply
27 in Support of its Motion to Dismiss, concludes that the Motion cannot
28 be ruled upon at this time. This conclusion is based upon the fact
29 that the Minute Entry issued by Judge Daniel Martin referenced
30 motions and reply briefs filed, upon which the motion to dismiss with
prejudice was granted based on the “reasons advanced” in those
filings. The undersigned has not had the benefit of seeing those
filings, and therefore, is unaware of the reasons asserted therein.
Absent those documents, the undersigned cannot determine if
Respondent’s position is appropriate or can be granted.

Consequently, the Motion will be addressed at the scheduled
hearing.

1 Bylaws or in the Articles or the Declaration, shall hold office until his or her
2 successor is elected and qualified. Nothing herein shall be construed to
3 prevent the appointment or election of any person or persons to two or more
4 terms as director, whether or not such terms shall be consecutive. No
5 person shall be eligible for election as a director who is not at the time of
6 election a Member of the Association, except such persons as may be
7 designated by Declarant or by a corporate, partnership or other non-
8 individual Unit Owner. If, after election: (a) any director (except for a director
9 designated by Declarant or by a corporate, partnership or other non-
10 individual Unit Owner) cease to be a Member, he or she shall thereupon no
11 longer be a director and his or her office shall become vacant; or (b) a
12 corporate, partnership or other non-individual Unit Owner ceases to be a
13 Member, any director serving by virtue of having been designated by such
14 corporate, partnership or other non-individual Unit Owner shall thereupon
15 no longer be a director and his or her office shall become vacant.

16
17 6. Article 4.4 of the Bylaws, Annual Board Meetings states:

18 Within thirty (30) days after each annual meeting of Members, the newly
19 elected directors shall meet forthwith for the purpose of organization, the
20 election of officers, and the transaction of other business and, if a quorum of
21 the directors is present, no prior notice of such meeting shall be required to
22 be given, provided that the place and time of such first meeting of newly-
23 elected directors may be changed by written consent of all of the directors.

24
25 7. Petitioner did not establish by a preponderance of the evidence that
26 Respondent “never elected the board at its Annual Members Meetings” or that “in the
27 notices for annual Members Meeting of 2018 and 2019, board election was not even on
28 the agendas” as alleged in his Petition. In fact, Petitioner failed to present any
29 documentary evidence at hearing to establish the alleged violations and instead,
30 presented mere assertions, notwithstanding being given the opportunity to fully present
his case.

8. Consequently, Petitioner failed to establish, by a preponderance of the
evidence, that Respondent violated Article 3.3, Article 4.1 and Article 4.4. of Respondent’s
Bylaws as alleged in the filed Petition.

ORDER

IT IS ORDERED that Petitioners’ Petition is denied.

NOTICE

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

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7 Done this day, January 22, 2021.

8 /s/ Sondra J. Vanella
9 Administrative Law Judge

10
11 Transmitted electronically to:

12 Judy Lowe, Commissioner
13 Arizona Department of Real Estate

14 Transmitted through US Mail to:

15 Haining Xia
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18 Edith Rudder
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