

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Arleen D Jouxson,
Petitioner

No. 22F-H2222030-REL

4 vs.
5 The Villages at Aviano Condominium
6 Association,
Respondent

**ORDER GRANTING IN PART AND DENYING
IN PART MOTION TO DISMISS**

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8 Pending are Respondent's Motion to Dismiss Petitioner Arleen Jouxson's petition and its
second Motion requesting oral argument. Petitioner did not file a response to either Motion.

9 Petitioner raises two issues: (1) Whether the Agreement to seat Eloise Figueroa and
10 Linda Barr as directors violated provisions of the Bylaws, Declaration and Statutes and should
11 therefore be nullified; and (2) whether it was permissible to conduct business at a Special Board
12 Meeting on June 25, 2021 without a quorum of board members present in violation of Bylaws
13 section 3.9.

14 Respondent argues that the tribunal and Department have no authority to hear the
15 matter because the Agreement at issue was entered in Superior Court to resolve a lawsuit and
16 is therefore not a community document. See ARIZ. REV. STAT. § 32-2199 (limiting the scope of
17 hearings). More specifically, Respondent argues that Petitioner seeks to nullify or void the
Superior Court's Agreement and that the tribunal has no authority to do so.

18 Regarding Petitioner's first issue, the Agreement explicitly provides that the Association
19 has certified that Ms. Figueroa and Ms. Barr received the most votes at an election and are
20 therefore elected to the Board. In her Petition, Petitioner asserts that there was no election, but
21 the Agreement is not a community document and is therefore not within this tribunal's scope of
22 authority. Consequently, it is appropriate to dismiss the first issue.

23 Regarding Petitioner's second issue, Respondent argues that Petitioner is seeking to
24 void the Agreement's provision showing that the new Board (consisting of Ms. Figueroa and Ms.
25 Barr and Tony Basuini) "shall be free to discuss and deliberate at an open Board meeting
26 whether, how, and with whom to fill the two vacant seats." Respondent has not demonstrated
27 that the Agreement can be read to allow the Board to violate provisions of the Bylaws when
28 doing so. Consequently, it is not appropriate to dismiss the second issue and the parties should
be prepared to present evidence and legal argument on that issue at the time of the hearing.

29 **IT IS ORDERED** that Respondent's Motion to Dismiss is granted with respect to Petitioner's
30 first issue and no evidence will be accepted on that issue;

1 **IT IS FURTHER ORDERED** that Respondent's Motion is denied with respect to Petitioner's
2 second issue and that the parties should be prepared to present evidence and legal argument on that
3 issue at the hearing.

4 Done this day, April 1, 2022.

5 /s/ Thomas Shedden
6 Thomas Shedden
7 Administrative Law Judge

8 Transmitted by either mail, e-mail, or facsimile April 1, 2022 to:

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