



1           6.     At issue is Ms. Jouxson's assertion that the Association violated  
2 community documents and a statute in its conduct related to the April 13, 2021 (annual)  
3 member meeting and election of two board members. More specifically, Ms. Jouxson  
4 alleges that (1) the Association exceeded its authority and it usurped the members'  
5 authority to elect board members when the Association concluded that Ms. Figueroa  
6 and Linda Bahr were the top two vote-getters during that election and (2) the election  
7 never occurred because the Association canceled it.

8           7.     In March 2021, the Association, through its property manager, noticed an  
9 Annual Member Meeting to be conducted by Zoom on April 13, 2021. Sign-in was  
10 scheduled to start at 5:45 p.m.

11           8.     An election of two Board Members was also scheduled for the April 13th  
12 member-meeting.

13           9.     The Association mailed to the members absentee ballots to be used for  
14 the April 13th election.

15           10.    The ballots show that to be counted, ballots were required to be received  
16 by the Association's management company by 3:00 p.m. April 13, 2021, but ballots  
17 would also be accepted at the meeting no later than 6:00 p.m.

18           11.    The ballots showed that there were six candidates for the two seats, but  
19 also show that nominations for other candidates would be taken from the floor during  
20 the member meeting.<sup>2</sup>

21           12.    The absentee ballots show that they would expire on completion of the  
22 election.

23           13.    A total of 191 completed ballots were received by the Association before  
24 the member meeting was convened. Forty ballots were required for a quorum.

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27 Owners Association ("HOA") without an election by the Association membership was an action prohibited  
28 by: the Bylaws Article 3 § 3.1, the Declaration Article 6 § 6.2, and A.R.S. § 33-1243.B, and should  
29 therefore be nullified."

30 <sup>2</sup> The record in this matter does not show how nominations from the floor would be accepted during the  
Zoom meeting. The record also does not show whether there was an intention to allow members to vote  
at the meeting by a method other than submitting an absentee ballot before the 6:00 p.m. deadline.



1           25. At the direction of the Association's attorney, the property manager ended  
2 the April 13, 2021 member meeting, presumably by ending the Zoom call. The ballots  
3 were not counted on April 13, 2021.

4           26. On April 27, 2021, Ms. Figueroa filed in Maricopa County Superior Court a  
5 Complaint against the Association for Breach of Contract and Declaratory and Injunctive  
6 Relief.

7           27. In her suit, Ms. Figueroa requested that the Court declare (i) that the  
8 election for the 2021 board of directors that ended on April 13, 2021 was valid, (ii) that  
9 she and Ms. Bahr prevailed in that election, and (iii) that she and Ms. Bahr were valid  
10 board members who were entitled to be seated as directors.

11           28. Ms. Figueroa also filed a request for a Temporary Restraining Order,  
12 asking for a preliminary injunction to enforce the results of the 2021 election and to seat  
13 herself and Ms. Bahr as board members.

14           29. The Association, through counsel, filed its answer on May 26, 2021.

15           30. Through their respective counsel, Ms. Figueroa and the Association  
16 negotiated a potential settlement. During those negotiations, the Association proposed  
17 to immediately complete the annual election, to count all proper ballots that were  
18 submitted by the April 13th deadline, and to seat the two highest vote-getters.

19           31. Subsequently, the Association provided that it appeared that Ms. Figueroa  
20 and Ms. Bahr had received the highest number of votes and that they would be seated  
21 on the Board on the effective date of a settlement agreement resolving the lawsuit.

22           32. The Association and its attorneys counted the ballots received and  
23 determined that Ms. Figueroa and Ms. Bahr had received the highest number of votes.

24           33. Ms. Figueroa and the Association entered a Settlement Agreement in  
25 which the Association acknowledged and certified that Ms. Figueroa and Ms. Bahr had  
26 received the highest number of votes and that they were elected to the Board. Ms.  
27 Figueroa signed on her own behalf and Mr. Basuini signed for the Association in his role  
28 as Board president.

29           34. Ms. Figueroa and the Association then filed with the Court a Stipulation to  
30 Dismiss and on June 22, 2021 the Court entered an Order of Dismissal with Prejudice.

1           35. As called for in the Settlement Agreement, Ms. Figueroa and Ms. Bahr  
2 were seated as Board members.

3           36. The April 13, 2021, member meeting was not reconvened and no other  
4 membership meetings were convened in 2021.

5           37. On January 25, 2022, Ms. Jouxson filed with the Department her petition  
6 that led to this matter being scheduled.

7           38. Ms. Jouxson argues that there was no member meeting and the  
8 Association's decision to seat Ms. Figueroa and Ms. Bahr violated ARIZ. REV. STAT.  
9 section 32-1248(B), Bylaws section 3.1 and CC&R section 6.2, all of which require that  
10 Board members be elected by unit owners (i.e., members of the Association).

11           39. In her petition, Ms. Jouxson alleged that there was no election, because  
12 the election was canceled by the Board on April 13, 2021.

13           40. No Board meeting was noticed for, or convened on, April 13, 2021.

14           41. There was no evidence adduced showing that the Board members could  
15 cancel the election, which was being conducted at a member meeting that was  
16 convened with a quorum present.

17           42. Ms. Jouxson also argues that the Association had no authority to enter the  
18 Settlement Agreement because the substance of the agreement exceeded its scope of  
19 authority.

20           43. Ms. Jouxson argues that not all votes were counted because more  
21 absentee ballots were sent out than were returned by the deadline of 6:00 p.m. April 13,  
22 2021. Ms. Jouxson presented no evidence showing that any of the ballots that were not  
23 returned were acted on by the members who received those ballots (i.e., that those  
24 members voted).

25           44. Ms. Jouxson argues that members may have intended to vote at the  
26 meeting or to have nominated themselves to run for the Board during the meeting but  
27 were not given a chance to, and were therefore disenfranchised. Ms. Jouxson did not  
28 present any evidence to show that any potential voter was disenfranchised, and her  
29 own ballot voting for Ms. Figueroa and Ms. Bahr is in evidence (showing she was not  
30 disenfranchised).



1 7. Ms. Jouxson has not met her burden to show that ARIZ. REV. STAT. section  
2 33-1248(B), Bylaws section 3.1, or CC&R section 6.2 were violated because she has  
3 not shown that Ms. Figueroa and Ms. Bahr were seated without an election by the  
4 members.

5 8. The evidence shows that a member meeting and Board election was  
6 noticed, that a sufficient number of ballots to constitute a quorum were received, and  
7 the member meeting was convened. The evidence also shows that the Association  
8 inappropriately postponed the April 13, 2021 membership meeting, when it did not allow  
9 the members to vote on the motion to postpone, the Association subsequently counted  
10 all valid ballots, which ballots did not expire until the completion of the election, and the  
11 results showed that Ms. Figueroa and Ms. Bahr had won the election.

12 9. Consequently, Ms. Jouxson's allegation that there was no election is not  
13 proven, and she did not prove that the Board, rather than the membership, elected Ms.  
14 Figueroa and Ms. Bahr.

15 10. Ms. Jouxson presented no substantial evidence showing that there were  
16 irregularities in how the ballots were collected and she presented no substantial  
17 evidence showing that any member was disenfranchised.

18 11. Ms. Jouxson's petition should be dismissed.

19 **ORDER**

20 **IT IS ORDERED** that Arleen D. Jouxson's petition is dismissed.

21 **NOTICE**

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

27 Done this day, August 4, 2022.

1 /s/ Thomas Shedden

2 Thomas Shedden

3 Administrative Law Judge

4 Transmitted by either mail, e-mail, or facsimile August 4, 2022 to:

5 Louis Dettorre

6 Commissioner

7 Arizona Department of Real Estate

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