



ARIZONA DEPARTMENT OF REAL ESTATE (ADRE)

Homeowners Association Dispute Resolution

www.azre.gov

100 North 15th Avenue, Suite 201, Phoenix, Arizona 85007

Douglas A. Ducey  
Governor

Louis Dettorre  
Commissioner

ATTENTION RESPONDENT

Pursuant to Arizona Revised Statute § 32-2199.01 (C) you are required to file a response to the Petition with the Department of Real Estate within twenty (20) days of the notification. Failure to file a response will be deemed an admission of the allegations made in the Petition, and the Commissioner shall issue a default decision.

Response Re: Case # HO22-22/030

- 1. All of the complaint items in the Petition are denied.
- 2. The following complaint items are denied (any allegations not specifically denied will be deemed admitted).

See Response, attached.

- 3. All of the complaint items have been resolved.
- 4. The number of witnesses the Respondent will call to testify at the hearing: 3.
- 5. Petitioner was copied on this response.

If this matter is referred, Respondent will be represented by: (provide name and contact information)

Diana Elston, Jones, Skelton, & Hochuli, P.L.L.C.

40 N. Central Ave. Suite 2100, Phoenix, AZ. 85004 (602) 263-1700

Respondent's Signature

Date

2-23-22

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4 Phoenix, Arizona 85004  
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9 Attorneys for Respondent The Villages at  
10 Aviano Condominium Association

11 **ARIZONA DEPARTMENT OF REAL ESTATE**  
12 **IN AND FOR THE STATE OF ARIZONA**

13 ARLEEN D. JOUXSON,

14 Petitioner,

NO. HO22-22/030

**RESPONSE TO PETITION FOR  
HEARING**

15 v.

16 THE VILLAGES AT AVIANO  
17 CONDOMINIUM ASSOCIATION,

18 Respondent.

19 Respondent, The Villages At Aviano Condominium Association (“Association”),  
20 through undersigned counsel, hereby submit its Response in Case # HO22-22/030.

21 All of the complaint items in the Petition are denied unless specifically admitted in  
22 this Response.

23 **I. GENERAL ALLEGATIONS**

24 Respondent admits that Petitioner, Arleen Jouxson, is a member and owner of Unit  
25 1369 at The Villages at Aviano Condominium Association. Respondent further admits that the  
current community manager is Natasha DeCoto, of PMG Services.

1 In way of background, Eloise Figueroa filed a Complaint in the Maricopa Superior  
2 Court, Case No. CV 2021-006916, on April 27, 2021, challenging the Association's 2021 annual  
3 election. "Figueroa alleged in the Litigation that she and Linda Bahr received the two highest  
4 number of votes and should have been declared board members." [Settlement Agreement,  
5 attached as Exhibit A to Respondent's Motion to Dismiss] The civil lawsuit involved issues with  
6 the annual election and number of Board of Directors that are raised as issues in the Petition. That  
7 civil lawsuit was resolved by a Settlement Agreement and has been dismissed, with prejudice.

8 As of April 2021, Tony Basuni was President of The Villages at Aviano  
9 Condominium Association. Ms. Figueroa reached an agreement with the Association, and a  
10 Settlement Agreement and Mutual Release of Claims was executed by both parties. Mr. Basuni,  
11 as President of the Association, signed the agreement on June 11, 2021. The Superior Court  
12 lawsuit was dismissed, with prejudice, on June 22, 2021. Pursuant to the Settlement Agreement,  
13 Eloise Figueroa and Linda Bahr took their seats as board members after the dismissal of the  
14 lawsuit. A copy of that Settlement Agreement and Mutual Release of Claims is attached to  
15 Respondent's Motion to Dismiss.

16 **II. AFFIRMATIVE DEFENSES**

- 17 1. The Petition must be dismissed for lack of jurisdiction and lack of authority.
- 18 2. This tribunal lacks jurisdiction over the issues as alleged in the Petition.
- 19 3. The Department of Real Estate and Arizona Office of Administrative  
20 Hearings do not have authority pursuant to A.R.S. § 32-2199 to hear this matter.
- 21 4. The Arizona Department of Real Estate, under the statutory scheme A.R.S.  
22 § 32-2199, et. seq., does not have authority to invalidate, void, nullify, or set aside a valid  
23 settlement agreement.
- 24 5. The Arizona Department of Real Estate, under the statutory scheme A.R.S.  
25 § 32-2199, et. seq., does not have authority to grant the relief requested in the Petition.
- 26

1           6.     This matter must be dismissed because the homeowner dispute resolution  
2 process under A.R.S. § 32-2199.01 does not delegate authority for the administrative agency to  
3 resolve a dispute between a homeowner and another homeowner.

4           7.     Petitioner's issues are barred by res judicata and/or issue preclusion because  
5 the issues have already been litigated and adjudicated in Maricopa Superior Court, Case No. CV  
6 2021-006916, entitled *Figueroa v. The Villages at Aviano Condominium Association*, and that  
7 lawsuit has been dismissed with prejudice.

8           8.     The settlement agreement, signed by the Association's President, Tony  
9 Basuni, on June 11, 2021, is binding on the Association's members, including Petitioner, and she  
10 is prohibited from challenging that agreement in this forum.

11           9.     Petitioner's Petition fails to state a claim upon which relief can be granted.

12           10.    All members of the Association have the same rights and obligations and are  
13 owed an equal duty of fairness.

14           11.    The Board of Directors for the Association has acted properly and taken all  
15 actions for the benefit of the Association, pursuant to its duties and obligations.

16           12.    Respondent acted reasonably in the exercise of its discretionary powers.

17           13.    Respondent affirmatively alleges it has acted reasonably and dutifully in  
18 discharging its duties to the members of the Association.

19           14.    Respondent affirmatively alleges its actions were taken in good faith, with  
20 the care an ordinarily prudent person in a like position would exercise under similar  
21 circumstances, and in a manner to be in the best interest of the Association, and it is protected by  
22 the business judgment rule.

23           15.    Respondent affirmatively alleges there are no grounds to issue a civil penalty.

24           16.    The Association reserves its right to assert all affirmative defenses available  
25 to it, in law or in equity, and reserves the right to plead further affirmative defenses as may be  
26 justified by the facts determined as this matter progresses. Moreover, Respondent incorporates

1 by reference all of the affirmative defenses set forth in Rules 8(c) and 12(b) of the Arizona Rules  
2 of Civil Procedure as well as all defenses delineated in Title 10 of the Arizona Revised Statutes.

3 **III. WITNESSES**

4 Respondent reserves the right to supplement its witnesses and file a List of  
5 Witnesses and Exhibits, if this matter is not dismissed, prior to any scheduled hearing. Without  
6 waiving its right to supplement amount of witnesses for the hearing, Respondent intends to call  
7 approximately three (3) witnesses at the hearing.

8 **IV. OTHER MATTERS**

9 Respondent will be represented by undersigned counsel, who has filed a Notice of  
10 Appearance. A copy of this Response, Motion to Dismiss, and Notice of Appearance, have been  
11 sent to Petitioner.

12 **V. CONCLUSION**

13 Respondent requests that this matter be dismissed based on its arguments raised in  
14 the Motion to Dismiss, filed on February 22, 2022.

15 DATED this 23<sup>rd</sup> day of February, 2022.

16 JONES, SKELTON & HOCHULI P.L.C.

17  
18 By 

19 Diana J. Elston  
20 40 N. Central Avenue, Suite 2700  
21 Phoenix, Arizona 85004  
22 Attorneys for Respondent The Villages at Aviano  
23 Condominium Association  
24  
25  
26

1 ORIGINAL of the foregoing electronically filed  
2 this 23<sup>rd</sup> day of February, 2022.

3 Attention: HOA Dispute Process  
4 Arizona Department of Real Estate  
5 100 N. 15th Avenue, Suite 201  
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed/e-mailed  
8 this 23<sup>rd</sup> day of February, 2022, to:

9 Arleen D. Jouxson  
10 3935 E. Rough Rider Road, Unit 1369  
11 Phoenix, Arizona 85050  
12 jouxsonmeyers@outlook.com  
13 Petitioner Pro Per

14 Lewis A. Baker