

1 Diana J. Elston, Bar #025461
2 JONES, SKELTON & HOCHULI P.L.C.
3 40 N. Central Avenue, Suite 2700
4 Phoenix, Arizona 85004
5 Telephone: (602) 263-4413
6 Fax: (602) 200-7811
7 delston@jshfirm.com
8 minuteentries@jshfirm.com

REVIEWED
By ADRE at 9:45 am, Feb 24, 2022



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,

NO. HO22-22/030

Petitioner,

**RESPONSE TO PETITION FOR
HEARING**

v.

14 THE VILLAGES AT AVIANO
15 CONDOMINIUM ASSOCIATION,

Respondent.

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

18 All of the complaint items in the Petition are denied unless specifically admitted in
19 this Response.

20 **I. GENERAL ALLEGATIONS**

21 Respondent admits that Petitioner, Arleen Jouxson, is a member and owner of Unit
22 1369 at The Villages at Aviano Condominium Association. Respondent further admits that the
23 current community manager is Natasha DeCoto, of PMG Services.
24
25

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.

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 23rd 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 23rd 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 23rd 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