

1 2. On or about September 18, 2023, Petitioner filed a two-issue petition
2 against the Association with the Department. Petitioner tendered \$1,000.00 to the
3 Department with his petition.

4 3. On or about October 20, 2023, the 3 Canyons Ranch Master Homeowners'
5 Association ("Association") filed its ANSWER with the Department whereby it denied all
6 complaint items in the petition.

7 4. Per the NOTICE OF HEARING, the Department referred this matter to the
8 Office of Administrative Hearings ("OAH"), an independent state agency, for an
9 evidentiary hearing on December 14, 2023, regarding the following issues based on
10 Petitioner's petition:

11 Petitioner alleged Respondent violated ARS 33-1803(A),(C),(E) and
12 (D4) after Respondent

13 1. "nearly doubled the assesment amount from previous year" [sic]

14 2. "imposed violation fee without first discussing the violation with
15 [Petitioner] in front of the board members"

16 **THE PARTIES AND GOVERNING DOCUMENTS**

17 5. Respondent is a homeowners' association whose members own properties
18 in a residential real estate development located in Hereford, Arizona.

19 6. Petitioner is a property owner and a member of the Association.

20 7. The Association is governed by its Covenants, Conditions, and Restrictions
21 ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The Association is also
22 regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes ("ARIZ. REV.
23 STAT.")

24 **HEARING EVIDENCE**

25 8. Petitioner testified on his own behalf. Respondent called Mike Needham as
26 a witness. The Agency Record from the Department and NOTICE OF HEARING were also
27 admitted into the evidentiary record.

28 Petitioner's testimony

1 9. Petitioner testified that he purchased the house in May 2022, and resided in
2 the same for approximately one month before returning to his other residence in Idaho.
3 Petitioner testified he received no information from the Association regarding a welcome
4 letter or other community documents.

5 10. As to the assessment issue, Petitioner testified further that on July 1, 2023,
6 he received a statement from the Association showing that the yearly assessment had
7 gone from \$525.00 per year to \$1,010.00 per year. Petitioner testified that he contacted
8 the property manager to inquire as to the dues increase. It was Petitioner's belief that a
9 dues increase of the amount could not be accomplished without a vote per Arizona
10 Revised Statutes.

11 11. In addition, Petitioner testified that Mr. Needham sent him an e-mail on
12 September or October informing Petitioner that the correct assessment amount was
13 \$525.00.

14 12. As to the fine for the alleged violation, Petitioner testified that he wanted to
15 add a courtyard and a 5 foot 6 inch wall on his property. He commenced construction on
16 August 9, 2022. On October 24, 2022, he received a Notice of Violation letter via email.

17 13. Petitioner then testified that he submitted his building plans to the
18 Association on January 19, 2023. Petitioner testified that he had to submit the plans three
19 different times as the Association would reject the same.

20 Mike Needham's testimony

21 14. Mr. Needham was the President of the Board of Directors, and had been a
22 member of the board since December 2010.

23 15. Mr. Needham testified that he was made aware of the mistake in the amount
24 of the assessment and immediately corrected the same, and a new ledger was created on
25 July 7, 2023, which accurately reflected the \$525.00 yearly assessment amount.¹ Mr.
26 Needham testified that he also emailed Petitioner in September or October 2023, that the
27 correct assessment amount was \$525.00.

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29

30 ¹ See Respondent's Exhibit 4.

1 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
2 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
3 the other.”⁶

4 5. ARIZ. REV. STAT. § 33-1803 provides, in relevant part, as follows:

5 A. Unless limitations in the community documents would result in a
6 lower limit for the assessment, the association shall not impose a
7 regular assessment that is more than twenty percent greater than the
8 immediately preceding fiscal year's assessment without the approval
9 of the majority of the members of the association. Unless reserved to
10 the members of the association, the board of directors may impose
11 reasonable charges for the late payment of assessments. A
12 payment by a member is deemed late if it is unpaid fifteen or more
13 days after its due date, unless the community documents provide for
14 a longer period. Charges for the late payment of assessments are
15 limited to the greater of fifteen dollars or ten percent of the amount of
16 the unpaid assessment and may be imposed only after the
17 association has provided notice that the assessment is overdue or
18 provided notice that the assessment is considered overdue after a
19 certain date. Any monies paid by the member for an unpaid
20 assessment shall be applied first to the principal amount unpaid and
21 then to the interest accrued.

22 B. After notice and an opportunity to be heard, the board of directors
23 may impose reasonable monetary penalties on members for
24 violations of the declaration, bylaws and rules of the association.
25 Notwithstanding any provision in the community documents, the
26 board of directors shall not impose a charge for a late payment of a
27 penalty that exceeds the greater of fifteen dollars or ten percent of
28 the amount of the unpaid penalty. A payment is deemed late if it is
29 unpaid fifteen or more days after its due date, unless the declaration,
30 bylaws or rules of the association provide for a longer period. Any
monies paid by a member for an unpaid penalty shall be applied first
to the principal amount unpaid and then to the interest accrued.
Notice pursuant to this subsection shall include information
pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the
property owned by the member is in violation of the community
documents without regard to whether a monetary penalty is imposed
by the notice may provide the association with a written response by

⁶ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 sending the response by certified mail within twenty-one calendar
2 days after the date of the notice. The response shall be sent to the
3 address identified in the notice.

4 D. Within ten business days after receipt of the certified mail
5 containing the response from the member, the association shall
6 respond to the member with a written explanation regarding the
7 notice that shall provide at least the following information unless
8 previously provided in the notice of violation:

9 1. The provision of the community documents that has
10 allegedly been violated.

11 2. The date of the violation or the date the violation was
12 observed.

13 3. The first and last name of the person or persons who
14 observed the violation.

15 4. The process the member must follow to contest the notice.

16 E. Unless the information required in subsection D, paragraph 4 of
17 this section is provided in the notice of violation, the association shall
18 not proceed with any action to enforce the community documents,
19 including the collection of attorney fees, before or during the time
20 prescribed by subsection D of this section regarding the exchange of
21 information between the association and the member and shall give
22 the member written notice of the member's option to petition for an
23 administrative hearing on the matter in the state real estate
24 department pursuant to section 32-2199.01. At any time before or
25 after completion of the exchange of information pursuant to this
26 section, the member may petition for a hearing pursuant to section
27 32-2199.01 if the dispute is within the jurisdiction of the state real
28 estate department as prescribed in section 32-2199.01.

29 6. As to the assessment issue, Petitioner has not met its burden to prove that
30 the Association violated the statute. The testimony provided, demonstrated that there
was an error in the ledger Petitioner received initially, but that was corrected as evidenced
by the July 7, 2023 ledger, and by Mr. Needham's e-mail on September/October 2023
confirming that annual assessment was \$525.00 per year.

1 7. As to the fine, nothing in the statute requires the Association to send the
2 notice via certified mail. Therefore, although Petitioner never received the Notice of
3 Violation via mail, he did receive the same on October 24, 2022. From the evidence
4 provided, the Notice complied with all of the statutory requirements and the fine was not
5 imposed until the January 11, 2023 board meeting, almost two and half months later,
6 which gave Petitioner plenty of time to respond. As to Petitioner's claim that he then never
7 received the letter concerning the fine, the tribunal finds this claim to be disingenuous.
8 While Petitioner informed Mr. Needham that Jolly Acres was now the owner and to mail all
9 community documents to them, he did not provide an address nor update a corrected
10 address with the Association. Thus, this was not the Association's fault that he did not
11 receive notice of the fine.

12 8. Based upon the foregoing, Petitioner did not meet her burden of proof in
13 demonstrating that the Association was in violation of ARIZ. REV. STAT. § 33-1803.

14 **ORDER**

15 **IT IS ORDERED** that Petitioner's petition in this matter be denied.

16 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
17 Respondent shall not reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. §
18 32-2199.01.

19 **NOTICE**

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

25 Done this day, February 12, 2024.

26
27 /s/ Adam D. Stone
28 Administrative Law Judge
29

1 Transmitted by either mail, e-mail, or facsimile February 12, 2024 to:

2
3 Susan Nicolson
4 Commissioner
5 Arizona Department of Real Estate
6 100 N. 15th Avenue, Suite 201
7 Phoenix, Arizona 85007

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15 By: OAH Staff
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