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Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Millard C. and Samantha Finch
Petitioners,
v.
Mountain Gate Community aka Copper
Canyon Ranch,
Respondent.

No. 25F-H017-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: February 7, 2025.

APPEARANCES:

For Petitioners: Samantha and Millard Finch.

For Respondents: Attorney B. Austin Baillio.

ADMINISTRATIVE LAW JUDGE: Samuel Fox

EXHIBITS ADMITTED INTO EVIDENCE: Notice of Hearing File, provided by the Department of Real Estate. Petitioners' Exhibits 1 through 10. Respondent's Exhibits 1 through 8.

FINDINGS OF FACT

PETITIONERS' CLAIM

1. Mountain Gate Community aka Copper Canyon Ranch ("Respondent") is a planned community association in Surprise, Arizona.

2. Millard C. and Samantha Finch ("Petitioners") owned a home located at 14561 W. Sierra Street, Surprise, Arizona 85379, and were members of Respondent.

3. On or about October 15, 2024, Petitioners filed a four-issue Petition with the Arizona Department of Real Estate ("Department") alleging that Respondent had violated Planned Community Statutes, A.R.S. §§ 33-1803(A), (B), and 33-1242(A)(11);

1 its Bylaws, Article 3.12; and CC&Rs, Article 6.10.5, 6.9, and 6.10.1. The four issues
2 identified in the Petition, for which Petitioners paid the requisite \$2,000.00 filing fee,
3 were as follows:

4 Issue1: The Association and the Board levy a \$45.00 charge [\$15.00 late
5 charge for delinquent assessment in tandem with \$30.00 "late notice fee"]
6 against the Account of Mr. and Mrs. Finch Account when their assessment
7 is paid before or on the due date, in violation of ARS 33-1803(B), and
8 Association Rules and Design Guidelines, Article 5.2 , Article 6.10.5, and
9 Article 6.9. (ATCH 1 – Petitioner’s Letter, dated June 28, 2024 re:
10 "Unpublished and Invalid Fees Levied Against Account and Pre-Legal
11 Department Asserting Association’s Authority to Collect on Unpublished
12 and Invalid Fees")

13 Issue 2: The \$45.00 charge [\$15.00 late charge for delinquent assessment
14 in tandem with \$30.00 "late notice fee"] the Association and the Board
15 levy against Mr. and Mrs. Finch’s Account for each discrete instance the
16 Association and the Board deem Mr. and Mrs. Finch to be delinquent in
17 their assessment, exceeds the 'not greater than \$15.00" remedy for
18 delinquent assessment, in violation of ARS 33-1803(A) which provides
19 that "Charges for the late payment of assessments are limited to the
20 greater of fifteen dollars [...]", in violation of CC&R Article 6, Section
21 6.10.1 which provides that "...[t]he Board may establish a late fee, not to
22 exceed the greater of fifteen dollars (\$15.00) [...] (but in no event an
23 amount greater than permitted under applicable law) (ATCH 1 –
24 Petitioner’s Letter, dated June 28, 2024 re: "Unpublished and Invalid Fees
25 Levied Against Account and Pre-Legal Department Asserting
26 Association’s Authority to Collect on Unpublished and Invalid Fees")
27 (cont'd - See Attached)

Issue 3: The Association and the Board levy \$30.00/ \$20.00 "late notice
fees" against Mr. and Mrs. Finch’s Account without providing notice –
failing to answer the pragmatic question 'what is a late notice fee'—in
violation of ARS §33-1803(B), ARS §33-1242(A)(11), which provides that
while the board of directors may impose reasonable monetary penalties
on members for violations of the declaration, bylaws and rules of the
association, the monetary penalties may be imposed only "after notice and
an opportunity to be heard", in violation of ARS 33-1803(A) which provides
that while "[...] the board of directors may impose reasonable charges for
the late payment of assessments [...] Charges for the late payment of
assessments [...] may be imposed only after the association has provided
notice", and in violation of the Association Rules and Design Guidelines,
"Violations; Imposition of Fines; Other Corrective Action" (pg. 14) which
states that "[n]o fines shall be imposed without first providing a notice of
the violation from the Association to the Owner [...]".

Issue 4: The Association and the Board's pre-legal team threaten the
Association’s authority to foreclose the Assessment Lien [Article 6,
Section 6.10.5 (ii)] and the Association’s authority to bring legal action to

1 hold an Owner personally liable for delinquent assessment and personally
2 liable for the \$30.00 “late notice fees” [Article 6, Section 6.10.5(i)], and
3 threaten the Association’s authority to record a Notice of Lien against
4 Owner’s Lot [Article 6.10.2] when Mr. and Mrs. Finch are not delinquent in
5 their assessment in violation of ARS 33-1807(A) which provides that for
6 the Association to “bring[...] an action at law against the Owner personally
7 obligated to pay the delinquent Assessments [...] (Article 6.10.5 (i)), or
8 “bring[...] an action to 2 foreclose the Assessment Lien against the Lot” (id
9 (ii)), there must exist a cause – “owner has been delinquent in the
10 payment of monies secured by the lien.”¹

11 4. Respondent, through its Attorney, Austin Baillio, filed a written answer to
12 the Petition, denying all allegations.²

13 5. The Department referred the Petition to the Office of Administrative
14 Hearings, an independent state agency, for an evidentiary hearing.

15 6. A hearing was held on February 7, 2025. Administrative Notice was taken
16 of the agency record. Samantha Finch testified on behalf of Petitioners. Jonathan
17 Sweat, former Community Manager, and Melinda Montoya, Accounts Receivable
18 Manager for First Service Residential, testified for Respondent.

19 REFERENCED BYLAWS

20 7. Article 3.12 of the Bylaws provided in relevant part as follows:

21 The Board may employ for the Association and the Project a “Managing
22 Agent” at a compensation established by the Board. The Managing Agent
23 shall perform such duties and services as the Board shall authorize,
24 including, but not limited to, all of the duties listed in the Project
25 Documents except for such duties and services that under the Project
26 Documents may not be delegated to the Managing Agent. The Board may
27 delegate to the Managing Agent all of the powers granted to the Board or
the officers of the Association by the Project Documents other than the
power (i) to adopt the annual budget, any amendment thereto or to levy
Assessments; (ii) to adopt, repeal or amend Association Rules; (iii) to
designate signatories on Association bank accounts; (iv) to borrow money
on behalf of the Association; (v) to acquire real property. So long as the
Declarant owns any Lot, any change in the Managing Agent must be
approved in writing by the Declarant.

COMMUNITY RULES AND DESIGN GUIDELINES

¹ Not. of Hr’g. File, Homeowners Association (HOA) Dispute Process Petition. (All errors included in original.)

² Not. of Hr’g. File, Attention Respondent (Response Form).

1 8. Page 2, under the header FINANCE, provided in relevant part as follows:

2 The following rules apply to the payment of Assessments for the Project:

3 1st day of each month:

4 Assessment is due and payable to the Association at the address provided by the Property Manager to each Owner of a Lot

5 15th day of each month:

6 If the Community Manager has not received an Assessment payment by this date, a late payment charge not to exceed the greater of Fifteen Dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof shall be charged to each Owner of a Lot. Owner may be notified that the Association intends to record a notice of claim of lien.

9 30th day of the month following the Assessment due date:

10 If the Community Manager has not received the Assessment payment(s) within thirty (30) days of the due date(s), the Board may authorize the Property Manager to record a notice of lien against the Owner's Lot and file a lawsuit in the appropriate Court to collect the past due Assessment(s). The amount to be collected under the lawsuit will include interest on the past due Assessment(s), amounts expended by the Association to record the notice of lien and prosecute the lawsuit.

14 9. Page 14, under the header VIOLATIONS; IMPOSITION OF FINES; OTHER
15 CORRECTIVE ACTION, provided in relevant part as follows:

16 FINES: No fine shall be imposed without first providing a notice of the violation from the Association to the Owner describing the violation and stating that failure to correct the violation within a specified period of time shall make the Owner subject to imposition of a fine. Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments.

21 **REFERENCED STATUTES**

22 10. A.R.S. §§ 33-1803(A) and (B) provided in relevant part as follows:

23 A. . . . Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of

1 the unpaid assessment and may be imposed only after the association
2 has provided notice that the assessment is overdue or provided notice that
3 the assessment is considered overdue after a certain date. Any monies
4 paid by the member for an unpaid assessment shall be applied first to the
5 principal amount unpaid and then to the interest accrued.

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

18 **11.** A.R.S. §§ 33-1807(A) and (K) provided as follows:

19 A. The association has a common expense lien on a property for any
20 assessment levied against that property from the time the assessment
21 becomes due. The association's common expense lien may be foreclosed
22 in the same manner as a mortgage on real estate but may be foreclosed
23 only if the owner has been and remains delinquent in the payment of
24 assessments, for a period of one year or in the amount of \$1,200 or more,
25 whichever occurs first, as determined on the date the action is filed. The
26 association board of directors shall exercise reasonable efforts to
27 communicate with the member and offer a reasonable payment plan
before filing a foreclosure action. If an assessment is payable in
installments, the full amount of the assessment is a lien from the time the
first installment of the assessment becomes due.

K. Notwithstanding any provision in the community documents or in any
contract between the association and a management company or any
other agent of the association, including any agreement or contract with
any attorney, unless the member directs otherwise, all payments received
on a member's account shall be applied first to any unpaid assessments,
due but not delinquent assessments, unpaid charges for late payment of
those assessments if authorized in the declaration, unpaid reasonable
collection fees and costs incurred or applied by the association, and
unpaid attorney fees and costs incurred with respect to those
assessments if awarded by a court, in that order, with any remaining
amounts applied next to other unpaid fees, charges and monetary
penalties or interest and late charges on any of those amounts.

12. A.R.S. § 33-1242(A)(11) provided as follows:

A. Subject to the provisions of the declaration, the association may: . . .

1 11. Impose charges for late payment of assessments after the association
2 has provided notice that the assessment is overdue or provided notice that
3 the assessment is considered overdue after a certain date and, after
4 notice and an opportunity to be heard, impose reasonable monetary
5 penalties on unit owners for violations of the declaration, bylaws and rules
6 of the association.

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REFERENCED COVENANTS, CONDITIONS AND RESTRICTIONS

13. CC&R Section 6.1.1 provided as follows:

The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due.

14. CC&R Section 6.9 provided as follows:

Rules Regarding Billing and Collection Procedures. Annual Assessments and Neighborhood Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.³

15. CC&R Sections 6.10.1 and 6.10.5 provided as follows:

Effect of Nonpayment of Assessments; Remedies of the Association

³ See Resp. Exh. 2.

1 6.10.1 Any Assessment or any installment of an Assessment not paid
2 within fifteen (15) days after the Assessment or the installment of the
3 Assessment first became due (or such longer period of time as required
4 by applicable law) shall be deemed delinquent and shall bear interest from
5 the date on which such Assessment or installment of the Assessment
6 became due at the rate of twelve percent (12%) per annum or the
7 prevailing V NFHA interest rate for new home loans, whichever is higher.
8 In addition, the Board may establish a late fee, not to exceed the greater
9 of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid
10 Assessment or installment thereof (but in no event an amount greater than
11 permitted under applicable law), to be charged to any Owner who has not
12 paid any Assessment, or any installment of an Assessment, within fifteen
13 (15) days after such payment was due. Notwithstanding the foregoing, to
14 the extent applicable law from time to time provides for any shorter period
15 of time after which Assessments or any other amounts payable hereunder
16 may or shall become delinquent, such shorter period of time may be
17 established by the Board to apply in lieu of the time period set forth in this
18 Section, and to the extent applicable law from time to time provides for
19 any greater amount of late fee or other amount to be charged to any
20 Owner deemed delinquent in the payment of any Assessment, or any
21 installment of an Assessment, such greater amount may be established by
22 the Board to apply in lieu of the late fee set forth in this Section. . . .

23 6.10.5 The Association shall have the right, at its option, to enforce
24 collection of any delinquent Assessments together with interest, lien fees,
25 reasonable attorneys' fees and any other sums due to the Association in
26 any manner allowed by law including, but not limited to: (i) bringing an
27 action at law against the Owner personally obligated to pay the delinquent
Assessments and such action may be brought without waiving the
Assessment Lien securing the delinquent Assessments and (ii) bringing
an action to foreclose the Assessment Lien against the Lot in the manner
provided by law for the foreclosure of a realty mortgage. The Association
shall have the power to bid at any foreclosure sale and to purchase,
acquire, hold, lease, mortgage and convey any and all Lots purchased at
such sale.⁴

19 **HEARING EVIDENCE**

20 16. On or before September 9, 2019, Petitioner's account incurred
21 approximately \$295.00 in fines.⁵

22 17. On or about February 2020, First Service Residential (FSR) became the
23 manager for Respondent.⁶ During the transition of FSR becoming the manager, and for

24 ⁴ See Resp. Exh. 2.

25 ⁵ See Resp. Exh. 5. Petitioners argued that these fines were wrongly imposed; however, that was not an
26 issue for this hearing.

27 ⁶ Not. of Hr'g. File, Petition and Supporting Documents, at 37-43; see also Montoya Testimony.

1 the first few months thereafter, FSR did not impose late charges on assessments which
2 were paid late.⁷

3 18. FSR applied payments to an account as follows: first, payments were
4 applied to delinquent assessments; then, payments were applied to assessments due
5 but not delinquent; then, payments were applied to other amounts due.⁸

6 19. For late payments, FSR charged a \$15.00 Late Charge.⁹

7 20. FSR also provided collection services for Respondent: an employee
8 reviewed overdue accounts and processed overdue-payment paperwork, sending a
9 collection notice to members with overdue accounts.¹⁰ FSR charged the Respondent
10 for that service, which was directly passed on to the homeowner who incurred the
11 charge.¹¹ The \$20.00 "Rebill Fee" and \$30.00 "Late Notice Fee" were both charges for
12 collection services provided by FSR.¹²

13 21. Petitioners did not timely pay their assessment for April 2020.¹³

14 22. In May 2020, Petitioners started paying their assessments using the
15 ClickPay online portal.¹⁴ The portal stated as follows:

16 When scheduling your auto-payments, please ensure your payment
17 withdrawal dates are ON or AFTER the 1st of each Billing Cycle. Your
18 payment(s) will not post to your account if you do not follow this setup
19 criteria. The upcoming assessment amount / balance will not reflect until
20 the 1st of the billing cycle.¹⁵

21 23. In May 2020, Petitioners paid their assessment, but the amount was
22 applied to the unpaid April 2020 assessment, incurring a Late Charge and a Rebill Fee

23 ⁷ See Finch Testimony.

24 ⁸ See Montoya Testimony; see also A.R.S. § 33-1807(K).

25 ⁹ See Resp. Exh. 1.

26 ¹⁰ See Sweat Testimony; see also Montoya Testimony.

27 ¹¹ See Sweat Testimony; see also Montoya Testimony.

¹² See Sweat Testimony; see also Montoya Testimony.

¹³ See Resp. Exh. 5.

¹⁴ See e.g. Resp. Exh. 5, 6.

¹⁵ See Resp. Exh. 7.

1 for May.¹⁶ In June 2020, Petitioners again paid their assessment, but the amount was
2 applied to the unpaid May 2020 assessment, incurring a Late Charge and a Rebill Fee
3 for June.¹⁷ In July 2020, Petitioners timely paid both their June 2020 and July 2020
4 assessments, and they did not incur any fees.¹⁸ In August 2020, Petitioners paid their
5 assessment late, incurring a Late Charge and Rebill Fee.¹⁹ Petitioners did not pay their
6 assessment for December 2021 until January 2022, incurring a Late Charge and a Late
7 Notice Fee.²⁰

8 24. In November 2022, Petitioners attempted to pay their December
9 assessment early.²¹ At the time of the early payment, the December assessment had
10 not yet been posted to Petitioner's account, and Petitioners did not communicate to
11 FSR or Respondent that the payment was a prepayment of the December
12 assessment.²² Accordingly, the payment was applied to past due amounts.²³

13 25. From January 2023 through February 2025, Petitioners continued to make
14 payments, not understanding that their attempt to pre-pay the December 2022
15 assessment was unsuccessful.²⁴ Accordingly, payments from January 2023 through
16 February 2025 were applied to the previous month's assessment, resulting in a Late
17 Charge and Late Notice Fee every month.²⁵

18 26. For each month, Respondent and FSR provided Petitioners with a
19 statement, each of which explained activity on the bill and the impact of paying late.²⁶

21 ¹⁶ See Resp. Exh. 5.

22 ¹⁷ See *id.*

23 ¹⁸ See *id.*

24 ¹⁹ See *id.*

25 ²⁰ See *id.*

26 ²¹ See *id.*; see also Finch Testimony.

27 ²² See Montoya Testimony.

²³ See *id.*; see also Resp. Exh. 5.

²⁴ See Resp. Exh. 5; see also Finch Testimony.

²⁵ See Resp. Exh. 5.

²⁶ See Pet. Exh. 6.

1 As of December 2022, the bills clearly stated that if the payment is late, the amount due
2 will increase by \$45.00, consisting of a \$15.00 Late Charge and a \$30.00 Late Notice
3 Fee.²⁷

4 27. Mr. Sweat testified that no efforts have ever been made to foreclose on
5 Petitioners.

6 28. No evidence was entered in support of the allegation that Respondent
7 threatened foreclosure, inappropriately or otherwise.

8 CONCLUSIONS OF LAW

9 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
10 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned
11 community documents.”

12 2. A.R.S. § 32-2199.01 permits a member of a planned community to file a
13 petition with the Department for a hearing concerning the planned community
14 association’s alleged violations as set forth in Title 33, Chapter 16. This matter lies
15 within the Department’s jurisdiction.

16 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
17 party to abide by the statute, condominium documents, community documents or
18 contract provision at issue and may levy a civil penalty on the basis of each violation.”
19 This Tribunal is not authorized to order other remediation or order civil penalties for
20 other conduct.

21 4. Petitioners bear the burden of proof to establish that Respondent violated
22 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.²⁸

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24
25 ²⁷ See *id.*

26 ²⁸ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
27 (1952).

1 Respondent bears the burden to establish affirmative defenses by the same evidentiary
2 standard.²⁹

3 5. “A preponderance of the evidence is such proof as convinces the trier of
4 fact that the contention is more probably true than not.”³⁰ A preponderance of the
5 evidence is “[t]he greater weight of the evidence, not necessarily established by the
6 greater number of witnesses testifying to a fact but by evidence that has the most
7 convincing force; superior evidentiary weight that, though not sufficient to free the mind
8 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
9 side of the issue rather than the other.”³¹

10 **COMPLAINT NUMBER 1:**

11 The Association and the Board levy a \$45.00 charge [\$15.00 late charge for
12 delinquent assessment in tandem with \$30.00 “late notice fee”] against the
13 Account of Mr. and Mrs. Finch Account when their assessment is paid before or
14 on the due date, in violation of ARS 33-1803(B), and Association Rules and
Design Guidelines, Article 5.2 , Article 6.10.5, and Article 6.9. (ATCH 1 –
Petitioner’s Letter, dated June 28, 2024 re: “Unpublished and Invalid Fees Levied
Against Account and Pre-Legal Department Asserting Association’s Authority to
Collect on Unpublished and Invalid Fees”)

15 6. For this issue, Petitioners argued that their payments were not late, but
16 the Respondent charged a Late Charge anyways.

17 7. In accordance with A.R.S. § 33-1803, the CC&Rs and Community Rules
18 and Design Guidelines state that an assessment payment is late if that payment is
19 received after the 15th day of the month in which it is due.

20 8. A.R.S. § 33-1807(K) requires that “all payments received on a member's
21 account shall be applied first to any unpaid assessments, due but not delinquent
22 assessments, unpaid charges for late payment of those assessments if authorized in
23

24 _____
25 ²⁹ See A.A.C. R2-19-119(B)(2).

26 ³⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

27 ³¹ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 the declaration, unpaid reasonable collection fees and costs incurred or applied by the
2 association.”³²

3 9. Respondent and FSR applied Petitioner’s statements to delinquent
4 assessments first, followed by due but not delinquent assessments, and then other
5 balances in accordance with A.R.S. § 33-1807(K).

6 10. The record established that Respondent and FSR correctly accounted for
7 and applied Petitioners payments, and only late payments were designated as late,
8 resulting in a Late Charge and the collection fees.

9 11. Petitioners’ argument that they made payments on time each month does
10 not overcome the fact that payments were appropriately applied to the previous month’s
11 assessment. Accordingly, Petitioners failed to demonstrate by a preponderance of the
12 evidence that Respondent charged Late Charges for payments that were not late.³³

13 **COMPLAINT NUMBER 2:**

14 The \$45.00 charge [\$15.00 late charge for delinquent assessment in tandem with
15 \$30.00 “late notice fee”] the Association and the Board levy against Mr. and Mrs.
16 Finch’s Account for each discrete instance the Association and the Board deem Mr. and
17 Mrs. Finch to be delinquent in their assessment, exceeds the ‘not greater than \$15.00’
18 remedy for delinquent assessment, in violation of ARS 33-1803(A) which provides that
19 “Charges for the late payment of assessments are limited to the greater of fifteen dollars
20 [...], in violation of CC&R Article 6, Section 6.10.1 which provides that “...[t]he Board
21 may establish a late fee, not to exceed the greater of fifteen dollars (\$15.00) [...] (but in
22 no event an amount greater than permitted under applicable law) (ATCH 1 – Petitioner’s
23 Letter, dated June 28, 2024 re: “Unpublished and Invalid Fees Levied Against Account
24 and Pre-Legal Department Asserting Association’s Authority to Collect on Unpublished
25 and Invalid Fees”) (cont’d - See Attached)

26 ³² Emphasis added.

27 ³³ Based on the record and without any binding force of law, it would be reasonable for to Respondent
remove the \$15.00 Late Fees for December 2022 through February 2025 where Petitioners made a
payment before the 15th of the month. Petitioners intended the second November 2022 payment to be
applied to December 2022, even though they did not indicate their intention at the time. Petitioners did
not understand the problem and believed they were making timely payments. While the Late Notice Fee
was charged by a third party (a hard cost), and Petitioners may reasonably bear the cost of their mistake,
the Late Fee is merely a deterrence measure (a soft cost).

COMPLAINT NUMBER 3:

The Association and the Board levy \$30.00/ \$20.00 “late notice fees” against Mr. and Mrs. Finch’s Account without providing notice – failing to answer the pragmatic question ‘what is a late notice fee’—in violation of ARS §33-1803(B), ARS §33-1242(A)(11), which provides that while the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association, the monetary penalties may be imposed only “after notice and an opportunity to be heard”, in violation of ARS 33-1803(A) which provides that while “[...] the board of directors may impose reasonable charges for the late payment of assessments [...] Charges for the late payment of assessments [...] may be imposed only after the association has provided notice”, and in violation of the Association Rules and Design Guidelines, “Violations; Imposition of Fines; Other Corrective Action” (pg. 14) which states that “[n]o fines shall be imposed without first providing a notice of the violation from the Association to the Owner [...]”.

19. For this issue, Petitioners argued that the Rebill Fees and Late Notice Fees were a impermissible penalties.

20. As discussed in Conclusions of Law 9 through 12, the Late Notice Fee and Rebill Fee were collection fees.

21. Collection fees are distinct from monetary penalties.

22. For example, A.R.S. § 33-1807(K) considers collection fees and monetary penalties as different kinds of charges: “unpaid reasonable collection fees and costs incurred or applied by the association” and “other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.”

23. Aside from the assertion that the Rebill Fee and Late Notice Fee were monetary penalties (or impermissible late fees), Petitioners did not provide any evidence to support that the fees were anything other than collection fees. Accordingly, Petitioners failed to meet their burden that Respondent impermissibly applied monetary penalties against Petitioners.

COMPLAINT NUMBER 4:

The Association and the Board’s pre-legal team threaten the Association’s authority to foreclose the Assessment Lien [Article 6, Section 6.10.5 (ii)] and the Association’s authority to bring legal action to hold an Owner personally liable for delinquent assessment and personally liable for the \$30.00 “late notice fees” [Article 6, Section 6.10.5(i)], and threaten the Association’s authority to record a Notice of Lien against

1 Owner's Lot [Article 6.10.2] when Mr. and Mrs. Finch are not delinquent in their
2 assessment in violation of ARS 33-1807(A) which provides that for the Association to
3 "bring[...] an action at law against the Owner personally obligated to pay the delinquent
4 Assessments [...] (Article 6.10.5 (i)), or "bring[...] an action to 2 foreclose the
5 Assessment Lien against the Lot" (id (ii)), there must exist a cause – "owner has been
6 delinquent in the payment of monies secured by the lien."

7 24. This issue, and Petitioners related arguments, were unclear.

8 25. None of the cited provisions address threats of legal action.

9 26. Petitioner did not submit evidence regarding a legal action by Respondent,
10 and Respondent's witnesses stated that no legal action was taken.

11 27. Petitioner argued that Respondent could not apply payments pursuant to
12 A.R.S. § 33-1807(K) without a court order. That is a misunderstanding of the statute.
13 Respondent was correct to apply payments pursuant to A.R.S. § 33-1807(K).

14 28. Petitioners are responsible for delinquent assessments, late fees, and
15 collection costs.

16 29. This complaint item either does not allege actionable conduct or is not yet
17 ripe for resolution. Accordingly, Petitioners failed to meet their burden for this issue.

18 ORDER

19 **IT IS ORDERED** that Respondent be deemed the prevailing party in this matter
20 regarding Petition Issues 1, 2, 3, and 4.

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, February 26, 2025.

/s/ Samuel Fox
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile February 26, 2025 to:

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By: OAH Staff