

1 **Final agency action regarding decision below:**

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3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 STEPHEN CHRISTIAN,

8 Petitioner,

9
10 vs.

11 SANDS ARCADIA TOWNHOUSES
12 ASSOCIATION,

13 Respondent.
14
15

No. 07F-H067006-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

16
17 **HEARING:** February 12, 2007.

18 **APPEARANCES:** Stephen Christian appeared personally. Sands Arcadia
19 Townhouses Association was represented by its attorneys, Penny Koepke, Esq., and
20 Troy Stratman, Esq.

21 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully
22

23 Based upon the evidence of record, the Administrative Law Judge makes the
24 following Findings of Fact, Conclusions of Law and Order:

25
26 **FINDINGS OF FACT**

- 27
28 1. This matter came before the Office of Administrative Hearings, an independent
29 agency, for hearing on the Petition for Hearing and Answer ("Petition") filed by
30 Stephen Christian ("Petitioner") with the State of Arizona Department of Fire,

1 Building and Life Safety ("Department") against Sands Arcadia Townhouses
2 Association, an Arizona non-profit corporation ("Respondent").

3 2. Petitioner's Petition alleges the following acts or conditions by Respondent:

- 4
- 5 1) Discrimination by denying landscape request 6/28/06. Article XV,
6 Section 2.
 - 7 2) Discrimination by denying landscape request 10/26/06. Article XV,
8 Section 2.
 - 9 3) Discrimination by threat of additional assessments 10/26/06. Article
10 XV, Section 2.
 - 11 4) Violation of CC & R regarding assessments. ¹

12 2. Petitioner is the owner of a residence located at 4335 E. Piccadilly Road,
13 Phoenix, Arizona. Petitioner's property is within the jurisdiction of Respondent
14 and the Declaration of Covenants, Conditions and Restrictions ("CC&R")
15 applicable to properties within Respondent's jurisdiction.

16 3. The Respondent's community was built in 1975.

17 4. By letter dated April 10, 2006, Petitioner made a request to Respondent's
18 Architectural Committee to allow him to install a wrought iron gate underneath
19 the arch at the entry way to his residence and to install wrought iron trelliswork
20 between the columns located between his carport and entry way. Petitioner
21 explained that he would plant Jasmine that would grow to cover the trelliswork
22 and fill in the space between the columns. He stated that his plan was similar to
23 that done by a neighbor located at 4343 E. Piccadilly Road, Phoenix, Arizona.

24 5. On April 16, 2006, Petitioner's request was reviewed by Respondent's Board of
25 Directors. The Board considered the recommendation of the Architectural
26 Committee, which opposed the requested trelliswork as a security concern. The
27 Board did approve the gate.

28 6. By letter dated May 22, 2006 to the Architectural Committee, Petitioner submitted
29 an amended landscaping request and request for a gate.

30 ¹ "CC & R" is the acronym for Covenants, Conditions and Restrictions applicable to the Respondent
and its homeowners.

1 7. The Architectural Committee received Petitioner's amended requests on May 27,
2 2007.

3 8. On or about June 26, 2006, the Architectural Committee approved Petitioner's
4 amended request for the trelliswork, with the following provisions:

5
6 The board approved the 8 foot gate similar to 4320 Piccadilly. The
7 wrought iron columns to be no higher than 3 ft 11 inches from the
8 floor of the carport as exists at 4343 E. Piccadilly. The wrought iron
should not be attached to the house.

9 9. By letter dated June 28, 2006, Respondent's property manager, Clay Brock,
10 advised Petitioner that his request for the trelliswork had been approved with the
11 above described provisions.

12 10. By letter dated September 25, 2006, Petitioner responded to Mr. Brock's June
13 28, 2006 letter. Petitioner explained his opposition to the provisions for installing
14 the trelliswork. He requested to appear at the next Board meeting to discuss his
15 request.

16 11. By letter dated October 18, 2006, the Board's legal counsel advised the Board
17 that it had acted within its power to place height restrictions on the trelliswork
18 proposed by Petitioner.

19 12. By letter dated October 26, 2006, Mr. Brock wrote the following to Petitioner
20 regarding Respondent's legal expenses:

21
22 The Sands Arcadia Board of Directors has asked Kachina
23 Management to write on their behalf to inform you that after you've
24 received this letter if any more legal costs accrue, they'll seek full
reimbursement from you.

25 Please do not hesitate to contact me if you have any questions
26 regarding this issue at 623-692-1971.

27
28 13. In November 2006, Petitioner filed his Petition against Respondent.

29 14. At the hearing, Petitioner submitted 30 photographs of homes within
30 Respondent's jurisdiction illustrating the use of wrought iron and landscaping at

1 the front of homes within the Respondent's community. Those photographs
2 showed wrought iron attached to entry ways and windows. A photograph of one
3 residence showed that a homeowner had hedges growing between columns
4 similar to Petitioner's residence from the ground to the top of the columns and
5 from column to column. Other photographs show wrought iron installed covering
6 entire open spaces.

7 15. Jerry Hamler is the owner of 4343 E. Piccadilly Road, the residence that the
8 Board used as the standard for approving the height of Petitioner's trellis. Mr.
9 Hamler testified that he installed the wrought iron trelliswork, which is
10 approximately 4' in height, between his columns without prior Board approval.
11 After the wrought iron was installed, he received a letter from the Board about the
12 unauthorized installation. He then made application to the Board, which approved
13 the existing installation.

14 16. Dolores de Werd is a present Board member and Chairperson of the
15 Architectural Committee. She testified that the following were factors considered
16 when Petitioner's request was evaluated: it has to fit the community's "open
17 look;" whether it is good for the community as a whole; any safety issues; will it
18 protect property values; and, consideration of the neighborhood as a whole.

19 17. Both parties agree that Respondent has authority under Article VII of the CC&R
20 to approve or deny Petitioner's request for approval of his proposed installation of
21 trelliswork. Article VII reads as follows:

22 ARCHITECTURAL CONTROL

23 No improvement, whether a building, fence, wall or other structure
24 shall be commenced, erected or maintained on any lot until the plans
25 including the nature, shape, kind, height, materials, floor plans,
26 location, and approximate costs thereof shall have been submitted to
27 and approved in writing by American Builders, Inc., an Arizona
28 corporation, its successors or assigns.² Said company shall have the
29 right to deny approval of any plans or specifications which are not, in
30 its opinion, suitable or desirable for aesthetic or any other reasons,
and shall have the right to take into consideration the harmony and

² It appears that Respondent is the successor to American Builders, Inc.

1 conformity of the building as seen from adjacent or neighboring
2 properties. All subsequent exterior additions, replacements,
3 alterations or improvements of any building, fence, wall or other
4 structures, also shall be subject to the prior approval of sale of 40
5 new townhouses on the premises, or two years from the date of this
6 Declaration, whichever first occurs, all rights and duties imposed
7 hereunder upon American Builders, Inc., its successors or assigns,
8 automatically shall be assigned to and undertaken by an architectural
9 committee composed of the Board of Directors of the Association, or
10 by a representative designated by the Board of Directors. The
11 members of such committee shall not be entitled to compensation for
12 such services performed pursuant to this paragraph. In the event
13 American Builders, Inc., its successors or assigns (or when
14 applicable, the Board of its designated committee) fails to approve or
15 disapprove such plans and specifications within thirty (30) days after
16 submission thereof, approval will not be required and this Article will
17 be deemed to have been fully complied with.

18. It is uncontroverted that Respondent does not have the authority to regulate a
19 member homeowner's landscaping.
19. Respondent's contention that Petitioner's plan to install trelliswork between the
20 columns of his residence creates the appearance of security issues for its
21 community is not justified by the evidence. As the photographic evidence
22 demonstrated, homeowners could grow hedges filling those physical spaces,
23 such as the one homeowner, without approval from the Board. Wrought iron
24 affixed to windows facing the front of residences in the community, which were
25 approved by the developer, appear to be more reflective of security concerns
26 than Petitioner's plan to place trellis between the columns next to his carport.
20. There is an inconsistent logic in denying Petitioner request to install wrought iron
27 trelliswork between the columns of his carport as he proposes, and the presence
28 of existing wrought iron in homes throughout Respondent's community.
29 Petitioner appears sincere in wanting to use the trelliswork solely to support
30 Jasmine to fill the space between the columns. The wrought iron trelliswork
would only provide the infrastructure to support the Jasmine. If Petitioner decided
to instead plant hedges between the columns as his neighbor has done,

1 Respondent would not have the authority to contest such action, which would
2 have the same effect of having a living wall of landscaping.

- 3 21. Respondent's objection to Petitioner's plan to affix trelliswork to his residence is
4 not persuasive. While the CC&R requires Respondent to maintain the exterior of
5 members' properties, it must do so with existing wrought iron on many of
6 community's residences. Therefore, it is determined that Petitioner's affixing
7 trellis as requested would not affect Respondent's maintenance obligations
8 anymore so than other existing homeowners' with wrought iron on the exterior of
9 their property.

10 **CONCLUSIONS OF LAW**

- 11
- 12 1. A.R.S. § 41-2198.01 permits a member of a homeowners association to file a
13 petition against the association with the Department. That statute provides that
14 such petitions will be heard before the Office of Administrative Hearings.
- 15 2. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this
16 matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-
17 119(A).
- 18 3. The Administrative Law Judge concludes that Respondent made an arbitrary and
19 capricious decision when it did not approved Petitioner's request for installing
20 trellis work, but instead restricted such installation to a height limited to 3 feet 11
21 inches rather than 8 feet, the height of the arch above the columns. Throughout
22 Respondent's community there are wrought iron installations over entryway
23 openings and over windows that are attached to the residences. There are
24 homes with extensive landscaping at the front of the residences, which
25 Respondent cannot control by its CC&R, and at least one home that has hedges
26 filling in the same type of spaces between columns as planned by Petitioner.
27 Such conditions contradict Respondent's concern for a no "closed in" look.
- 28 4. The Administrative Law Judge concludes that Petitioner sustained his burden of
29 proof in this matter.
30

- 1 5. The Administrative Law Judge concludes that Petitioner is the prevailing party in
2 this matter, and is entitled to reimbursement of his \$550.00 filing fee paid to the
3 Department from Respondent, pursuant to A.R.S. § 41-2198.02(A).
- 4 6. A.R.S. § 41-2198.02(A) provides that a homeowner association may be
5 assessed a civil penalty not to exceed \$500.00. Respondent threatened
6 Petitioner with the imposition of its attorney fees in this matter, which it had no
7 basis for doing so. The Administrative Law Judge concludes that the imposition
8 of a civil penalty is appropriate for such improper conduct by Respondent.

9
10 **ORDER**

11 IT IS ORDERED that Petitioner's request to install the trelliswork for Jasmine
12 between the columns of his carport, including attaching the trelliswork to the structure,
13 be granted.

14 IT IS FURTHER ORDERED that Respondent repay Petitioner his \$550.00 filing
15 paid to the Department within 30 days of the effective date of the entered Order in this
16 matter.

17 IT IS FURTHER ORDERED that Respondent pay a civil penalty in the amount of
18 \$500.00 to the Department within 30 days of the effective date of the entered Order in
19 this matter.

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21 Done this day, March 5, 2007

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23 _____
24 Brian Brendan Tully
25 Administrative Law Judge
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Original transmitted by mail this
____ day of _____, 2007, to:

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By _____