

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

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 CATHERINE CRANDALL,

8 Petitioner,

9 vs.

10
11 CHAMPAGNE HOMEOWNERS
12 ASSOCIATION, INC.

13 Respondent.

No. 07F-H067021-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

14
15 **HEARING:** April 9, 2007

16 **APPEARANCES:** Catherine Crandall on her own behalf; Carolyn B. Goldschmidt on
17 behalf of Champagne Homeowners Association, Inc.

18 **ADMINISTRATIVE LAW JUDGE:** Michael K. Carroll

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20
21 The Petition raised six issues:

- 22
23 **1. Petitioner alleged that the garage door paint color on Lot 54 does not**
24 **comply with Respondent's Architectural Guidelines.**

25 Following a discussion on the record prior to commencement of the hearing, this
26 allegation was dismissed pursuant to an agreement of the parties.

- 27
28 **2. Petitioner alleged that Respondent failed in its duty to repair and**
29 **maintain the exterior of the home and yard located on Lot 40.**

30 Findings of Fact:

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Phoenix, Arizona 85007
(602) 542-9826

1 Beginning in 2004, several complaints were made to the Respondent's
2 management company alleging violations of Respondent's Architectural Guidelines by
3 Gene Easterbrook, the owner of the residence on Lot 40. The management company
4 attempted to address the allegations initially through a series of letters and eventually by
5 imposing fines. Those attempts were unsuccessful. Ultimately, the property was sold in
6 a foreclosure sale, and the new owners of the property have assumed responsibility for
7 bringing it into compliance with Respondent's Architectural Guidelines.

8 During the period that the property was in disrepair, stagnant water was left in
9 one or more fountains on the property, and mold was discovered on one of the interior
10 walls of the home which was not common to any of Petitioner's walls. Respondent
11 weighed the cost and necessity of correcting the problem against the financial impact
12 such undertaking would have on Respondent's operating budget and the effect that
13 making the repairs would have on the community as a whole. After weighing those
14 considerations, Respondent elected not to undertake repairs or maintenance of the
15 property.

16 Conclusions of Law:

17 Petitioner argued that Respondent had a duty to bring the Easterbrook property
18 into compliance with the Covenants, Conditions and Restrictions (C,C & R) and the
19 Architectural Guidelines, after it became apparent that the homeowner either refused or
20 was incapable of doing so.

21 In support of her position, Petitioner cited C,C & R, Article IV, Section 1, which
22 provides for the imposition of assessments and for the creation of a lien against
23 properties for unpaid assessments; and Section 2, which requires Respondent to use
24 assessments "exclusively to promote the recreation, health, safety and welfare of the
25 residents of the property..." Petitioner also relied on a provision in Section 2 which
26 allows for the use of assessments to maintain "the exterior of residences containing
27 common Party Walls..."

28 In response to Petitioner's claim, Respondent cited C,C & R, Article VIII, Section
29 2. That provision grants Respondent the *right* to repair or maintain the lot or exterior of
30 a residence and to assess the owner for costs incurred, but it does not impose an

1 *obligation* to do so. Respondent made several attempts to encourage the owner of the
2 property to bring it into compliance with Architectural Guidelines, including the
3 imposition of fines. The property has since been transferred to new ownership and the
4 problems are being addressed.

5 Respondent did not act unreasonably or in violation of the C,C & R in failing to
6 take more intrusive and costly measures to bring the Easterbrook property into
7 compliance. Additionally, there was insufficient evidence that failure to take more
8 proactive measures constituted either a “nuisance” (See C,C & R, Article X, Section 13),
9 or an “unsafe or hazardous” activity (See C,C & R, Article X, Section 15).

10
11 **3. Petitioner alleged that Respondent failed in its duty to properly**
12 **maintain landscaping in common areas.**

13 Findings of Fact:

14 Insufficient facts were presented establishing that the landscaping and common
15 grounds maintenance program placed into effect by Respondent was inadequate, other
16 than for the existence of a broken branch hanging from a large tree in the common area
17 in front of Petitioner’s residence. At the hearing, Respondent indicated its intention to
18 address the broken branch in the tree in front of Petitioner’s property.

19 Conclusions of Law:

20 Respondent did not violate either its general obligation to landscape and
21 maintain the common areas, under C,C & R, Article VIII, Section 6; or its specific
22 obligation to maintain the natural vegetation in the sloped Common areas at
23 least quarterly, as required by the Architecture and Landscaping Regulations and
24 Guidelines (Exhibit P13).

25
26 **4. Petitioner alleged that the HOA violated regulations of the Federal**
27 **Communications Commission in ordering that she remove a satellite**
28 **dish.**
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30

1 Following discussion on the record prior to commencement of the hearing, it was
2 agreed that the order requiring removal of the satellite dish had subsequently been
3 rescinded by Respondent and the issue was no longer in dispute.

4
5 **5. Petitioner alleged that the HOA interfered with her right to collect on**
6 **an insurance claim for water damage to an interior wall in her unit .**

7 Findings of Fact:

8 Petitioner experienced a water leak at the junction between the exterior wall of
9 her residence and that of the residence on Lot 40. The leak caused damage to the
10 interior portion of a wall in Petitioner's residence. Inspection of the leak by a
11 professional home inspector revealed that the leak was caused by faulty construction at
12 one end of the transition between Petitioner's exterior wall and the roof of the residence
13 on Lot 40. Recent storms had exaggerated the leak which led to the visible damage to
14 Petitioner's interior wall.

15 Petitioner made several attempts, both with Respondent and with the insurance
16 company, to rectify the problems caused by the leak. Although it initially denied
17 Petitioner's claim, the insurance company ultimately concluded that it was responsible
18 for repairs to Petitioner's interior wall under Respondent's insurance policy.

19 On March 29, 2007, Respondent informed Petitioner by letter that the insurance
20 company had agreed to cover the cost of the repairs, minus Petitioner's obligation to
21 pay a \$1000.00 deductible, under Respondent's policy, and \$172.50 in depreciation.

22 By stipulation of the parties reached during the hearing, Respondent agreed to
23 pay the \$1000.00 deductible and the depreciation cost for Petitioner.

24 Conclusion of Law:

25 The stipulation of the parties regarding costs associated with repair of Petitioner's
26 interior wall resolves Petitioner's claim. There is no violation of the C,C & R with
27 respect to Respondent's obligation to repair Petitioner's interior wall damage.

28
29 **6. Petitioner requested recovery of legal fees and costs associated with**
30 **the filing of her Petition.**

1 Following discussion on the record prior to commencement of the hearing,
2 Petitioner was informed that the Office of Administrative Hearings does not have legal
3 authority to award attorney fees and costs to a party in this proceeding. This allegation
4 is dismissed.

5 Done this day, April 16, 2007.

6
7 _____
8 Michael K. Carroll
9 Administrative Law Judge

10 Original transmitted by mail this
11 ____ day of _____, 2007, to:

12
13 Department of Fire Building and Life Safety - H/C
14 Robert Barger
15 ATTN: Joyce Kesterman
16 1110 W. Washington, Suite 100
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18 Catherine Crandall
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26 By _____
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