

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 SIEGLINDE MARTIN,

8 Petitioner,

9 vs.

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11 BELLS 26 HOMEOWNERS ASSOCIATION

12 Respondent.

No. 07F-H067020-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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15 **HEARING:** July 25, 2007

16 **APPEARANCES:** Andrew Lynch, an attorney, on behalf of Petitioner; Corey Hill,
17 an attorney, on behalf of Respondent.

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

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21 On January 5, 2007, a Petition was filed with the Department of Fire, Building
22 and Life Safety in which Petitioner alleged that Respondent had violated its governing
23 documents and state statutes. Each of the grounds stated in that Petition is discussed
24 separately below.

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27 (1) Failure to maintain common grounds and landscaping.

28 Findings of fact:

29 Petitioner testified that she has been a member of Bells 26 Homeowners
30 Association (Respondent) since October, 2003. Respondent is governed by a

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1 Declaration of Restrictions (Declaration), Constitution and By-Laws (Constitution) and
2 Rules. Exhibit R1

3 In January, 2004, Petitioner planted 12 Cypress trees along a common wall of
4 the community behind her residential unit. Petitioner testified that, prior to purchasing
5 the trees, she asked Jack Bahr, a member of Respondent's Board of Management
6 (Board), if she were permitted to do so. Mr. Bahr told Petitioner she could do so at her
7 expense.

8 After planting the trees, Petitioner attempted to provide water for them by
9 connecting irrigation "bubblers" to the main irrigation system that supplied water for the
10 common area adjacent to the area where the trees were planted. However, Petitioner
11 testified that the trees have not received adequate water since they were planted. She
12 presented a report from a tree expert, who concluded that the trees had developed
13 poorly due to a lack of adequate water. Exhibit P6.

14 Petitioner also testified that, with the exception of the first year she lived in her
15 unit, the landscaping for the common areas has been poorly maintained. Specifically,
16 she testified that there were several areas where the grass had died, and, on occasion,
17 the hedge outside her front door had not been properly trimmed. See Exhibit P1.

18 Respondent, through the testimony of its former Board president, Gene Holcomb,
19 did not deny that there had been problems with the landscape maintenance during the
20 last several years. He attributed those problems primarily to an inability to retain the
21 services of a qualified landscaper. At the time the photographs in Exhibit P1 were
22 taken, Mr. Holcomb testified that Respondent's landscaper failed to properly aerate the
23 soil, fertilize and plant the winter grass. The Board fired that landscaping company and
24 hired another, which it also recently fired.

25 In a letter to Respondent's members, dated June, 2007, the current president of
26 Respondent's Board acknowledged the landscaping problems and outlined attempts
27 that were being made to correct them. Exhibit P13. In a newsletter published to the
28 association members in July, 2007, the Board detailed the steps it was taking to correct
29 the landscaping problems. Exhibit P15.

30 Conclusions of Law:

1 Respondent acknowledged that it had not been successful in properly
2 maintaining the landscaping in the Association's common areas. However, The
3 Declaration governing the Board requires only that it "use and expend the assessments
4 collected to maintain, care for and preserve the common elements, buildings, grounds
5 and improvements..." Declaration, Section 12 B.

6 There was no evidence to suggest that the assessments had not been used to
7 maintain the common grounds. The evidence merely established that Respondent's
8 efforts in that regard did not meet Petitioner's, or even Respondent's, expectations.
9 Respondent has recognized the need to improve the landscaping, and has taken
10 reasonable steps toward that end. That is its only obligation under the Declaration.

11 As to the failure to adequately water the trees planted by Petitioner, there was no
12 indication that those trees suffered from Respondent's landscaping woes to any greater
13 extent than the rest of the landscaping in the common areas. Furthermore,
14 assessments were used, by Petitioner's own admission, to supply the water received by
15 the trees that she planted. She was simply unhappy with the amount of water they
16 received. That does not constitute a violation of the Declaration.¹

17 2. Failure to properly paint Petitioner's exterior door.

18 Findings of Fact:

19 Section 12 B of the Declaration requires Respondent to maintain the exterior of
20 the buildings. Pursuant to that obligation, Respondent hired a painting contractor to
21 paint the exterior doors on each of the units in the fall of 2005. Petitioner's door was
22 painted by the contractor, but she was unhappy with the result. Additionally, Petitioner
23 removed a strip of indoor/outdoor carpet beneath her front door threshold when she
24 tiled the concrete area in front of her door. The area where the strip was removed was
25 not painted by Respondent. Exhibit P3.

26 Mr. Holcomb testified that he had inspected the paint job on Petitioner's door at
27 the time the work was done. He said it was consistent with the painting done

28 ¹ Respondent argued that Petitioner had not followed the proper procedure in obtaining permission to
29 plant the Cypress trees. In support of that position, it cited an amendment to the Rules and Regulations
30 passed October 2, 2005. That amendment requires members to obtain permission in writing signed by
three Board members in order to plant trees in the common area. However, that amendment was
passed after Petitioner planted the Cypress trees.

1 throughout the rest of the property and that there were no apparent defects. He also
2 testified that the carpet strip was removed by Petitioner after the painter had completed
3 his contract with Respondent. He testified that Petitioner's removal of the strip in order
4 to install the ceramic tile shifted the responsibility of finishing the exposed area to
5 Petitioner.

6 Conclusions of Law:

7 There was insufficient evidence to establish that Respondent had failed to
8 properly paint the exterior door of Petitioner's unit.

9 As to the failure to paint the strip below the threshold where the carpet was
10 removed, the carpet had been removed by Petitioner. Section 13 of the Declaration
11 authorizes Respondent to repair the area exposed when the carpet was removed by
12 Petitioner, but it does not create in Respondent an obligation to do so. Furthermore, if
13 Respondent chose to repair the area where the carpet was removed, it would be
14 permitted to assess Petitioner for the cost of that repair, since the repair was
15 occasioned by the act of Petitioner in altering the exterior of her unit. Declaration,
16 Section 13.

17 Petitioner failed to establish that Respondent had violated the Declaration with
18 regard to its obligation to maintain the exterior of her unit.

19 3. Failure to hold meetings open to the membership and properly notify membership:

20 Petitioner failed to present any evidence of meetings that were not open to the
21 membership or were conducted without proper notice to the association members.

22 4. Appointment of non-owner to the Board:

23 Findings of fact:

24 Gary Bodine was originally an owner and member of the association. In
25 February, 2005, he executed a quitclaim deed by which he transferred his interest in his
26 unit to the person with whom he had originally purchased the unit, but he continued to
27 live there. After transferring that ownership, he was appointed to the Board of
28 Management. Although there was some question as to whether the Board was aware
29 of the transfer of ownership when Mr. Bodine was appointed to the Board, he has since
30 resigned from the Board.

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By _____