

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

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

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 WIN KRESSEL

8 Petitioner,

9
10 vs.

11 CACHET GRAYHAWK CONDOMINIUM;
12 ROSSMAR & GRAHAM, MANAGEMENT
13 COMPANY,

14 Respondent.

No. 08F-HO780002-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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17 **HEARING:** October 9, 2007

18 **APPEARANCES:** Dr. Win Kressel on his own behalf; Jeffrey B. Corben Esq. on
19 behalf of Cachet Grayhawk Condominium

20 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

21
22 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

- 23 1. Dr. Win Kressel ("Petitioner") filed a Petition with the Arizona Department of Fire,
24 Building and Life Safety ("Department") alleging that Cachet Grayhawk Condominium
25 ("Association") will not allow his sister to park in his driveway or provide her with guest
26 parking. Petitioner contends that the Association has violated the provisions of Sections
27 4.13 and 6.3 of the Declaration of Covenants conditions and Restrictions
28 ("Declaration"), the Association's parking rules ("Parking Rules") and A.R.S. § 33-1227
29 by denying his sister parking.
30 2. Petitioner purchased his condominium unit at Cachet Grayhawk in May 2002 and
at that time was provided with a copy of the Declaration.

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3. The Parking Rules were adopted in 2004 by a vote of the Board of the Association ("Board").

4. The Association's Parking Rules provide for guests to park in guest parking for

1 up to 60 days but cannot park in town home driveways. The Parking Rules also provide
2 that family members who are not residents are guests and residents are considered
3 anyone who occupies a unit, be it full or part-time, but do not include visitors or guests
4 of an occupant. Visitors and Guests are defined as someone visiting for up to 60 days.

5 5. Petitioner's sister moved into his condominium unit at the beginning of the
6 summer 2007. Petitioner testified that his sister resides in his unit and may stay there
7 for as long as she wishes.

8 6. In a letter dated May 24, 2007, the Association notified Petitioner that on May 16,
9 2007, the Architectural Committee of the Association met and approved his request to
10 have guest parking for his sister through July 1, 2007.

11 7. In a letter dated July 2, 2007, the Association notified Petitioner that his request
12 for additional guest parking had been approved through September 1, 2007 with certain
13 stipulations, among which was that the guest vehicle cannot be parked in the driveway.
14 That notification also stated that "[t]his approval is an unusual exception to the adopted
15 Parking Rules due to extraordinary circumstances and will not be extended beyond
16 September 1, 2007."

17 8. Petitioner did not file with the Association any request to extend the guest
18 parking beyond the above-mentioned September 1, 2007 deadline.

19 9. On July 21, 2004, a rule was adopted by the Board that provided for guests to
20 park in guest parking up to 15 days during any 60 day consecutive period without Board
21 approval and after 15 days must get Board approval to the 60 day limit.

22 10. James Friebacher ("Mr. Friebacher"), President of the Association and a Board
23 member, testified that in 2004 the existing Board at that time provided an opportunity for
24 residents to obtain a variance under Section 4. 25 of the Declaration. He was one of six
25 unit owners that received a variance from the Parking Rules. The existing Board at that
26 time allowed him to park a second vehicle in his driveway. Mr. Friebacher was not a
27 member of the Board when he applied for the variance and the variance is still in effect.

28 11. Mr. Friebacher testified that Petitioner has not applied to the Board for a variance
29 under Section 4.25 of the Declaration.
30

1 12. Section 4.13 of the Declaration provides that no unit owner may park an
2 automobile or motor vehicle upon any part of the Condominium except in garages
3 assigned to the unit. That provision allows for guests of a unit owner to park a motor
4 vehicle not exceeding 7 feet in height and 18 feet in length owned or leased by the
5 guest in driveways allocated to the unit. The provision also provides that unit owners,
6 their family members and an occupant of a unit cannot park their vehicle in guest
7 parking areas.

8 13. Petitioner contends that by virtue of the above Declaration provision, he is being
9 restricted the use of the unit. However, Petitioner fails to present any facts or legal
10 arguments establishing that the Association violated Section 4. 13 of the Declaration.
11 The facts show that Petitioner's sister is a family member, an occupant of the unit and,
12 as such, falls within the definition of being a resident. Consequently, Petitioner's sister
13 cannot park as a guest and should not have been permitted to park in guest parking as
14 a guest.

15 14. Section 6.3 of the Declaration provides the Board with authority to adopt ,
16 amend, repeal rules and regulations, which may restrict and govern the use of any area
17 by a unit owner, the family of the unit owner or invitee or lessee but the rules may not
18 unreasonable discriminate among unit owners.

19 15. Petitioner contended that the Parking Rules that were adopted by the Board
20 constitute an amendment to the Declaration and should have been voted on by unit
21 owners. Additionally, Petitioner contended that the Parking Rules unreasonably
22 discriminate against him because he is only permitted one parking space. Petitioner
23 asserted that aside from his sister's living situation, if he marries, he will be forced to
24 move because he will not be able to have more than one parking space.

25 16. Petitioner asserted that A.R.S. § 33-1227 requires the Association to present an
26 amendment of the Declaration to a vote of the unit owners and that the Parking Rules
27 were adopted by the Board rather than put to a vote of the unit owners.

28 17. Petitioner did not present any legal authority or documents showing that the
29 above-cited provisions of the Declaration were either invalid or amended. Petitioner's
30 characterization as to the adoption of the Parking Rules as an amendment to the

1 Declaration is in error as there was no amendment but a vote of the Board to adopt
2 rules as permitted by the Declaration.

3 18. With respect to the assertion of unreasonableness, Petitioner failed to establish
4 facts or a legal standard showing that the Parking Rules are unreasonable. In fact, the
5 evidence of record established the need for the Board to adopt Parking Rules and set
6 standards, which are not unreasonable under the circumstances.

7 19. Petitioner failed to establish by a preponderance of the evidence that the
8 Association violated the above-cited provisions of the Declaration and failed to establish
9 by a preponderance of the evidence that the Association violated the provisions of
10 A.R.S. § 33-1227.

11 20. The Association requested that it be awarded its costs and attorneys' fees
12 pursuant to section 13.15 of the Declaration. That provision does not provide that the
13 Association may recover its costs and fees for defending an action such as the instant
14 one. Consequently, such fees and costs are not awarded to the Association.

15 **ORDER**

16 Based on the above, no action is required of the Association and the Petition is
17 dismissed.

18 Done this day, October , 2007.

19
20 _____
21 Lewis D. Kowal
22 Administrative Law Judge

23 Original transmitted by mail this
24 ____ day of _____, 2007, to:

25 Department of Fire Building and Life Safety - H/C
26 Robert Barger, Director
27 ATTN: Joyce Kesterman
28 1110 W. Washington, Suite 100
29 Phoenix, AZ 85007
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By _____