

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 ROBERT and CYNTHIA JOHNSON,

8 Petitioners,

9  
10 vs.

11 STARLIGHT PINES HOMEOWNERS  
12 ASSOCIATION,

13 Respondent.

**No. 08F-H078007-BFS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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17 **HEARING:** January 14, 2008.

18 **APPEARANCES:** Robert and Cynthia Johnson appeared personally. Starlight  
19 Pines Homeowners Association was represented by its attorney, Scott Humble, Esq.

20 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully

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

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25 **FINDINGS OF FACT**

- 26  
27 1. The Department of Fire, Building and Life Safety ("Department") is authorized by  
28 statute to receive Petitions for Hearing from members of homeowner  
29 associations in Arizona.

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Office of Administrative Hearings 1400 West Washington, Suite 101 Phoenix, Arizona 85007 (602) 542-9826
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- 2. Any Petitions for Hearing received by the Department from members of a homeowners association are referred to the Office of Administrative Hearings, an independent agency, for formal hearing pursuant to statute.
- 3. The Starlight Pines Homeowners Association (“Respondent”) is a homeowner association located in Happy Jack, Arizona.

- 1 4. Robert and Cynthia Johnson ("Petitioners") are members of Respondent.
- 2 5. On or about October 4, 2007, Petitioners filed a Petition with the Department
- 3 alleging a single count violation by Respondent. Petitioners' Petition alleges the
- 4 following violation:

5  
6 On or about 04/05/07 (specify date), the Respondent committed the  
7 specific following act, or specifically failed to act in the following  
8 manner, or caused the following condition to occur: The Board of  
9 Directors are inforcng [sic] an illegal rule that limits types of RV  
10 units allowed in Starlight Pines, in violation of the following  
11 provisions of the condominium or planned community documents  
12 and/or A.R.S. § Title 33, Chapter 9 (condominium) or A.R.S. Title  
13 33, Chapter 16 (planned community (planned community). Please  
14 specify the subsection: CC & Rs 3.7, 4.3, 10.8, 11.3 – ARS 33-  
15 1803.

- 16 6. The Department referred Petitioners' Petition to the Office of Administrative
- 17 Hearings for a formal evidentiary hearing.
- 18 7. The crux of the parties' dispute is Petitioners' parking of their livable recreational
- 19 vehicle in open view on their property.
- 20 8. Members of Respondent are subject to the Declaration of Covenants, Conditions
- 21 and Restrictions ("CC & Rs") dated April 3, 1984.
- 22 9. Section 4.3 of the CC & Rs provides that "[b]y a majority vote of the Board, the
- 23 Association may, from time to time and subject to the provisions of this
- 24 Declaration, adopt, amend, and repeal rules and regulations to be known as the
- 25 'Properties' ... which may restrict and govern the use of any area by any owner."
- 26 10. Article X of the CC & Rs governs Architectural Control for Respondent, including,
- 27 but not limited to, Respondent's Architectural Committee. The members of the
- 28 Architectural Committee are appointed by Respondent's Board of Directors.
- 29 11. Respondent's Architectural Committee issued Petitioners a CC & R Non
- 30 Compliance Report dated April 5, 2007 ("Report") due to a livable/sleeper type
- unit having been observed on their property. The Report advised Petitioners that
- they were in violation of Section 3.7 of the CC & Rs. Petitioners were advised

1 that if they did not remove their livable/sleeper trailer by April 10, 2007, a  
2 violation would be issued.

3 12. On October 18, 2006, Petitioner Robert Johnson submitted an Architectural  
4 Committee Trailer Approval Form to the Architectural Committee for the  
5 permanent storage of his travel trailer on his property.

6 13. At the time Petitioner Robert Johnson submitted his approval request,  
7 Respondent's Architectural Committee was composed of Petitioner Robert  
8 Johnson, David Anderson and Evert Bondurant.

9 14. On October 25, 2006, the Architectural Committee approved Petitioner Robert  
10 Johnson's request to permanently store his travel trailer on his property, subject  
11 to Coconino County Zoning ordinance. The approval was signed by Mr.  
12 Anderson and Mr. Bondurant.

13 15. The Architectural Committee composed of the three above named committee  
14 members issued the following rule change: "By unanimous consent the  
15 Architectural Committee has determined the Architectural Rules associated with  
16 CC&R paragraph 3.7 are prejudicial and discriminatory, and are therefore  
17 revoked as of January 19, 2007."

18 16. The Architectural Committee's Report for October 2006 does not reflect that it  
19 had approved Petitioner Robert Johnson's request to permanently park his trailer  
20 on his property.

21 17. On January 20, 2007, Respondent's Board of Directors removed Robert  
22 Johnson, David Anderson and Evert Bondurant from the Architectural Committee  
23 for their refusal to enforce the policies and procedures applicable to Section 3.7.

24 18. By letter dated February 15, 2007, Respondent notified its members of the  
25 Board's action regarding the Architectural Committee taken on January 20, 2007.  
26 The letter stated that only the Board had authority to revoke any policy or  
27 procedure approved by the Board.

28 19. At the hearing, the only witness for Petitioners was Evert Bondurant.

29 20. During his testimony, Mr. Bondurant admitted that the Architectural Committee  
30 that he had served on disregarded Respondent's Property Rules.

- 1 21. The Architectural Committee composed of Robert Johnson, David Anderson and  
2 Evert Bondurant acted without valid authority when it issued approvals to  
3 members allowing the permanent parking of livable trailers within the jurisdiction  
4 of Respondent.
- 5 22. The Architectural Committee's approval granted to Petitioner Johnson is invalid.

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7 **CONCLUSIONS OF LAW**

- 8 1. Pursuant to A.A.C. R2-19-119(B), Petitioners have the burden of proof in this  
9 matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-  
10 119(A).
- 11 2. Respondent did not violate the provisions of A.R.S § 33-1803 as alleged by  
12 Petitioners. Petitioners failed to sustain their burden of proof on this allegation.
- 13 3. Petitioners failed to sustain their burden of proof that Respondent violated CC &  
14 Rs Sections 3.7, 4.3, 10.8 and 11.3 as alleged in their Petition.
- 15 4. The Architectural Committee consisting of Robert Johnson, David Anderson and  
16 Evert Bondurant did not have the authority to grant permanent approval to  
17 Petitioner Robert Johnson. Such action was in accordance with Respondent's  
18 Property Rules and Section 3.7 of the CC & Rs.
- 19 5. Respondent is the prevailing party in this matter. Therefore, Petitioners are not  
20 entitled to an award of their \$550.00 filing fee. A.R.S. § 41-2198.02.

21  
22 **ORDER**

23  
24 IT IS ORDERED that Petitioners' Petition in Case No. HO 07-8/007 be  
25 dismissed.

26 Pursuant to A.R.S. § 41-2198.04(A), this Order is the final administrative decision  
27 and it is not subject to a request for rehearing. This Order is enforceable through  
28 contempt of court proceedings, pursuant to A.R.S. § 41.2198.02(B).

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Done this day, February 4, 2008

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Brian Brendan Tully  
Administrative Law Judge

Original transmitted by mail this  
\_\_\_\_ day of \_\_\_\_\_, 2008, to:

Robert Barger, Director  
Department of Fire Building and Life Safety - H/C  
ATTN: Debra Blake  
1110 W. Washington, Suite 100  
Phoenix, AZ 85007

Robert and Cynthia Johnson  
HC 31, Box 1899  
Happy Jack, AZ 86024

Joseph B. Swan, Jr., Esq.  
Scott Humble, Esq.  
Turley Swan Childers Righi & Torrens, PC  
3101 North Central Avenue, Ste.1300  
Phoenix, AZ 85012

By \_\_\_\_\_