

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 THOMAS HOGUE,

8 Petitioner,

9
10 vs.

11 SHADOW MOUNTAIN VILLAS
12 CONDOMINIUMS

13 Respondent.

No. 08F-H089011-BFS

ADMINISTRATIVE LAW JUDGE

DECISION ON DEFAULT

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17 Based upon the default by Shadow Mountain Villas Condominiums in timely
18 submitting an Answer to the Petition filed in this matter, the Administrative Law Judge
19 makes the following Findings of Fact, Conclusions of Law and Order on Default:

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21 **FINDINGS OF FACT**

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- 23 1. Pursuant to A.R.S. § 41-2198.01(B), the Arizona Department of Fire, Building
24 and Life Safety ("Department") is the state agency where petitions are filed when
25 a homeowner or planned community or condominium association requests a
26 hearing with regard to a dispute.
 - 27 2. On or about October 20, 2008, Thomas Hogue ("Petitioner") submitted a Petition
28 to the Department against Shadow Mountain Villas Condominiums
29 ("Respondent").
 - 30 3. Petitioner's Petition alleges the following act or omission by Respondent in
violation of the specified statute:

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

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On or about July 6, 2008 (specify date), the Respondent committed the specific following act, or specifically failed to act in the following manner, or caused the following condition to occur:

1 Failed to maintain drainage and common elements, causing my
2 condominium to incur significant flood damage during the monsoon
3 season, in violation of the following provisions of the condominium
4 or planned community documents and/or A.R.S. § Title 33,
Chapter 9 (condominium) or A.R.S. Title 33, Chapter 16 (planned
community). Please specify the subsection: 33-1247

- 5 4. Petitioner's Petition seeks the following relief: "impose a civil penalty on the basis
6 of each violation specified in the table" and, "If the petitioner prevails, order the
7 respondent to pay to the petitioner the filing fee required by A.R.S. § 41-2198.01."
8 5. Petitioner paid a filing fee in the amount of \$550.00 to the Department when he
9 filed his Petition.
10 6. On or about October 2, 2008. Department staff mailed a Notice of Petition to
11 Respondent. Pursuant to A.R.S. § 41-2198/01(D), Respondent was required to
12 submit a written response to the Department within 20 days. Respondent failed to
13 respond to the Notice of Petition.
14 7. On or about October 30, 2008, Department staff received the certified mail receipt
15 addressed to Respondent and returned by the U.S. Postal Service signed as
16 received by Respondent.
17 8. The Department referred the Petition to the Office of Administrative Hearings.
18 9. By its default in submitting a response to the Petition, Respondent is deemed to
19 have admitted to the allegations contained therein.
20 10. Respondent failed to maintain proper drainage of the Common Elements resulting
21 in Petitioner's unit being flooded.
22 11. As a result of his condominium being flooded, Petitioner spent the sum of
23 \$1.433.05 in repair costs to the interior of his unit. Petitioner also claims
24 compensatory damages of \$500.00. This administrative forum does not permit an
25 award to Petitioner for damages. Petitioner's claim for damages should be
26 addressed in a civil court of competent jurisdiction.
27 12. Respondent's failure to maintain the Common Elements resulting in the flooding
28 of Petitioner's unit, Respondent's failure to ameliorate the damage to Petitioner's
29 unit, and Respondent's failure to respond to the Petition are strong matters in
30 aggravation.

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CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 41-2198.01(B) and (D), the Department has the authority to receive Petitions involving disputes between an owner/member and a condominium associations, to require a nonrefundable filing fee from the petitioner, and to forward petitions to the Office of Administrative Hearings for assignment to an Administrative Law Judge.
2. Pursuant to A.R.S. § 41-2198.02(A), an assigned Administrative Law Judge “may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation.
3. Pursuant to A.R.S. § 41-2198(B), an order from an assigned Administrative Law Judge is a final administrative decision and it is not subject to rehearing. Such an order is enforceable through contempt of court proceedings.
4. Pursuant to A.R.S. § 41-2198.01(F), Respondent’s failure to file an Answer to the Petition is deemed an admission to the factual allegations supporting a violation of A.R.S. § 33-1247 by Respondent.
5. Respondent failed to maintain the Common Elements necessary to avoid the flooding of Petitioner’s unit, as required by ARTICLE 5. CONDOMINIUM MAINTENANCE AND REPAIR of the CC&Rs.
6. Respondent violated the provisions of A.R.S. § 33-1247, as cited in the Petition.
7. Pursuant to A.R.S. § 41-2198.02(A), Petitioner is the prevailing party in this matter and he is entitled to repayment of his \$550.00 filing fee from Respondent.

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ORDER ON DEFAULT

IT IS ORDERED that within 40 days from the date of this Order, Respondent shall reimburse Petitioner his \$550.00 filing fee.

IT IS FURTHER ORDERED that Respondent shall comply with the provisions of A.R.S. § 33-1247 and Article 5 of the CC&Rs..

1 IT IS FURTHER ORDERED that Respondent shall pay a civil penalty in the
2 amount of \$2,500.00 to the Department within 60 days of the date of this Order, unless
3 that deadline date is extended by the Department.

4 Pursuant to A.R.S. § 41-2198.02(B), this Administrative Law Judge Decision and
5 Order on Default is the final administrative decision and is not subject to a request for
6 rehearing. The Order on Default issued in this matter is enforceable through contempt
7 of court proceedings in the Superior Court.

8 A party may appeal a final administrative decision pursuant to Title 12, Chapter
9 7, Article 6. See A.R.S. § 41-1092.08(H). A.R.S. § 12-904(A) provides, in pertinent
10 part, that: “[a]n action to review a final administrative decision shall be commenced by
11 filing a complaint within thirty-five days from the date when a copy of the decision
12 sought to be reviewed is served upon the party affected. . . . Service is complete on
13 personal service or five days after the date that the final administrative decision is
14 mailed to the party's last known address.”

15 Done this day, December 22, 2008

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17 _____
18 Brian Brendan Tully
19 Administrative Law Judge

20 Original transmitted by mail this
21 _____ day of _____, 2008, to:

22 Robert Barger, Director
23 Department of Fire Building and Life Safety - H/C
24 ATTN: Debra Blake
25 1110 W. Washington, Suite 100
26 Phoenix, AZ 85007

27 Thomas Hogue
28 3511 East Baseline Rd., Unit 1187
29 Phoenix, AZ 85042

30 Shadow Mountain Villas Condominiums
3511 East Baseline Road
Phoenix, AZ 85032

By _____