



1 On December 10, 2008, a prehearing conference was conducted for oral  
2 arguments by the parties.

3 Article 15 Dispute Resolution is the applicable part of the CC&Rs in this dispute.  
4 Pursuant to Article 15.2 Agreement to Resolve Certain Disputes Without Litigation, the  
5 parties contractually agreed “that all Claims shall be resolved exclusively in accordance  
6 with the dispute resolution procedures set forth in this Article 15.”

7 Article 15.4 Mediation provides that if negotiation within the prescribed time  
8 frame is unsuccessful, then a party may timely submit the dispute “to mediation under  
9 the auspices of an American Arbitration Association (“AAA”) or such other independent  
10 mediator or mediation service selected by mutual agreement of the [Petitioner] and the  
11 Respondent.”

12 Article 15.5 Binding Arbitration provides that if mediation is unsuccessful, then  
13 the Claimant shall timely submit the dispute to binding arbitration.

14 The parties did not resolve their present dispute by negotiation. The dispute  
15 resolution process then moved up to mediation. The mediation process utilizes a  
16 mediator to assist the parties in attempting to resolve their dispute. It does not  
17 guarantee that the dispute will be resolved by that process.

18 After the parties’ settlement agreement in the first Petition, Petitioner filed a  
19 request for mediation with the AAA. The parties agreed to use Marc Kalish as the  
20 private mediator and to permit him to participate in the mediation via telephone to save  
21 the parties the cost of his personal appearance in Flagstaff.

22 After the parties had reached a tentative settlement in the mediation, Respondent  
23 then refused to execute the written agreement and insisted that Mr. Kalish participate in  
24 a second meditation.

25 Mr. Kalish informed the parties that further mediation would be a “waste of the  
26 parties’ money and [his] time.”

27 The mediation process is found to have failed to resolve the parties’ dispute.  
28 Instead of requesting binding arbitration pursuant to Article 15.5, Petitioner filed his  
29 second Petition with the Department.  
30

1 Respondent is found to have complied with the dispute resolution provisions of  
2 Article 15. It is Petitioner who failed to comply with those provisions by his not  
3 submitting his dispute with Respondent to binding arbitration, pursuant to Article 15.5.,  
4 after the parties' dispute could not be resolved in mediation.

5 Petitioner is not the prevailing party in this matter. Pursuant to A.R.S. § 41-  
6 2198.02(A), Petitioner is not entitled to an order requiring Respondent to pay  
7 Petitioner's filing fee required by A.R.S. § 41-2198.01.

8  
9 **ORDER**

10 IT IS ORDERED that Respondent's Motion to Compel Arbitration pursuant to  
11 Article 15.5 of the CC&Rs be granted.

12 IT IS FURTHER ORDERED that Petitioner comply with the provisions of Article  
13 15 Dispute Resolution of the CC&Rs involving his present dispute with Respondent.

14 IT IS FURTHER ORDERED that the Petition in Case No. HO-08-9/005/Docket  
15 No. 08F-H089005-BFS be dismissed.

16 Pursuant to A.R.S. §41-2198.04(A), this Order is the final administrative decision  
17 and it is not subject to a request for rehearing.

18 A party may appeal a final administrative decision pursuant to Title 12, Chapter  
19 7, Article 6. See A.R.S. § 41-1092.08(H). A.R.S. § 12-904(A) provides, in pertinent  
20 part, that: "[a]n action to review a final administrative decision shall be commenced by  
21 filing a complaint within thirty-five days from the date when a copy of the decision  
22 sought to be reviewed is served upon the party affected. . . . Service is complete on  
23 personal service or five days after the date that the final administrative decision is  
24 mailed to the party's last known address."

25 Done this day, December 23, 2008

26  
27 \_\_\_\_\_  
28 Brian Brendan Tully  
29 Administrative Law Judge  
30

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

3  
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18 Petitioner

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