

1 4. The parties are subject to the Declaration of Covenants, Conditions, Restrictions
2 and Easements for Verde Santa Fe, Yavapai County, Arizona ("CC&Rs").

3 5. The parties are also subject to the Verde Santa Fe Architectural Guidelines
4 (Residential) dated December 11, 1996.

5 6. Petitioner filed a Petition with the Department alleging a single count violation
6 against Respondent.

7 7. Petitioner's alleged single count violation reads as follows:

8
9 On or about 7/7/08 (specify date), the Respondent committed the
10 specific following act, or specifically failed to act in the following
11 manner, or caused the following condition to occur:

12 Denied my request to install awning. Their position is that no
13 awnings will be approved even though they are not prohibited in
14 guidelines, in violation of the following provisions of the
15 condominium or planned community documents and/or A.R.S. §
16 Title 33, Chapter 9 (condominiums) or A.R.S. Title 33, Chapter 16
(planned community).

17 Please specify the subsection: Architectural Guidelines, Sec. 4.13

18 8. The Department forwarded Petitioner's Petition to the Office of Administrative
19 Hearings, an independent agency, for formal hearing.

20 9. Respondent's Architectural Committee has the authority to approve or reject
21 Architectural Design Request Forms submitted by Respondent's members.

22 10. On or about June 11, 2008, Petitioner submitted an Architectural Design Request
23 for Approval form to Respondent's management company.

24 11. Petitioner sought approval for the installation of five fixed vertical rib canvass
25 awnings covering one 64" long Bay window, two 30" long Bay windows, and two
26 68" long windows at her residence. Each awning has a 24" drop with a 30"
27 horizontal projection. Petitioner circled the style of awning she desired to install
28 on the Sonair brochure attached to her submittal. The salmon color window
29 treatments (Sunbrella Color 4627-0000) have square edging on the valence of
30 the window awnings.

1 12. On or about June 26, 2008, the Architectural Committee denied Petitioner's
2 application because the requested awnings were "not in keeping with the
3 architectural character of Verde Santa Fe."

4 13. By letter dated July 7, 2008, Respondent's Board of Directors informed Petitioner
5 that the Architectural Committee had denied her request.

6 14. By letter dated July 27, 2008, Petitioner informed the Architectural Committee
7 that she was disappointed in their decision and requested that it reconsider its
8 decision.

9 15. By letter dated August 20, 2008, the Board informed Petitioner that the
10 Architectural Committee reconsidered and again rejected her request for the
11 awnings.

12 16. Section 4.13 Awnings and Shutters of the Verde Santa Fe Architectural
13 Guidelines (Residential) reads as follows: "No awnings or exterior shutters or
14 grills will be permitted without Committee approval." Therefore, awnings are
15 prohibited in the homeowners association unless the Architectural Committee
16 approves awnings.

17 17. Section 5.12.2 of the CC&Rs provides for the following:

18 The Architectural Committee shall promulgate architectural design
19 guidelines and standards (including, but not limited to, color
20 palettes and plant materials) to be used in rendering its decisions.
21 The decision of the Architectural Committee shall be final on all
22 matters submitted to it pursuant to this Declaration. As provided in
23 Section 3.4.9, the Architectural Committee may establish a
reasonable fee to deter the costs of considering any requests for
approvals submitted to the Architectural Committee, which fee shall
be paid at the time the request for approval is submitted.

24 18. Petitioner failed to establish that the Architectural Committee abused its
25 discretion in considering her request. On the contrary, there is credible evidence
26 that the Architectural Committee properly exercised its discretion by determining
27 that Petitioner's request was not aesthetically suitable for the homeowners
28 association.

29 19. Petitioner submitted into evidence a survey taken of her neighbors concerning
30 her request for awnings. However, the survey is not found to be persuasive in

1 this dispute. The governing documents set forth procedures for changing them. If
2 Petitioner is not satisfied with her governing documents, she has the option to
3 seek to have them changed.

4
5 **CONCLUSIONS OF LAW**

- 6 1. Pursuant to A.R.S. § 41-2198.01(B) and (D), the Department has the authority to
7 receive Petitions involving disputes between an owner/member and a
8 condominium associations, to require a nonrefundable filing fee from the
9 petitioner, and to forward petitions to the Office of Administrative Hearings for
10 assignment to an Administrative Law Judge.
- 11 2. Pursuant to A.R.S. § 41-2198(B), an order from an assigned Administrative Law
12 Judge is a final administrative decision and it is not subject to rehearing. Such an
13 order is enforceable through contempt of court proceedings.
- 14 3. Pursuant to A.R.S. § 41-2198.01(F), Respondent's failure to file an Answer to the
15 Petition is deemed an admission to the factual allegations supporting a violation
16 of A.R.S. § 33-1247 by Respondent.
- 17 4. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this
18 matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-
19 119(A).
- 20 5. Petitioner failed to establish that Respondent violated Section 4.13 of the Verde
21 Santa Fe Architectural Guidelines (Residential). On the contrary, the evidence
22 supports the conclusion that the Architectural Committee complied with that
23 provision.
- 24 6. Pursuant to A.R.S. § 41-2198.02(A), Petitioner is not the prevailing party in this
25 matter and she is not entitled to repayment of his \$550.00 filing fee from
26 Respondent.

27 **ORDER**

28 IT IS ORDERED that Petitioner's Petition be dismissed.
29
30

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

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

12
13 Done this day, February 2, 2009

14
15 _____
16 Brian Brendan Tully
17 Administrative Law Judge

18
19 Original transmitted by mail this
20 ____ day of _____, 2009, to:

21
22 Robert Barger, Director
23 Department of Fire Building and Life Safety - H/C
24 ATTN: Debra Blake
25 1110 W. Washington, Suite 100
Phoenix, AZ 85007

26 Jean E. Morris
27 6245 Wide Horizon Court
28 Cornville, AZ 86325

29 Bob J. McCullough, Esq.
30 Camelback Center
2355 East Camelback Road, #618

Phoenix, AZ 85016

1

By _____

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30