

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

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 KATHY WOZNIAK,

8 Petitioner,

9  
10 vs.

11 THE NORTH SLOPES PROPERTY  
12 OWNERS ASSOCIATION,

13 Respondent.  
14  
15  
16

**No. 11F-H1112001-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

17  
18 On October 19, 2011, oral argument was held to address Respondent’s First  
19 Amended Motion to Dismiss.

20 Based on the information presented by the parties, it is undisputed that at the  
21 time when Petitioner filed the Petition with the Arizona Department of Fire Building and  
22 Life Safety, she did not own Lot 20 within the North Slopes subdivision and was  
23 therefore not an owner within the meaning of A.R.S. § 41-2198.01(B) . Consequently,  
24 Petitioner does not have standing to be a party to an administrative hearing held  
25 pursuant to A.R.S. § 41-2198 *et seq.*

26 Additionally, Petitioner did not identify either in the Petition or during oral  
27 argument any statute or provision within the community documents that has been  
28 violated by Respondent. Although Petitioner claims that the Respondent did not enforce  
29 the Covenants, Conditions and Restrictions (“CC& Rs”), Petitioner articulated that her  
30 cause of action has to do with the fact that the CC& Rs in existence when she  
purchased Lot 20 provided that the minimum size of a home that could be constructed

1 within the subdivision was 2,500 square feet, and that subsequently, the CC& Rs were  
2 amended to increase the minimum home size to 3,500 square feet. However, Petitioner  
3 did not allege that Respondent, by amending the CC& Rs, violated any law or provision  
4 within any community document. Instead, Petitioner maintained that she had a contract  
5 with Respondent that was not adhered to, and that Respondent did not act in good faith.

6 Petitioner's gravamen is one that is contractual in nature and does not fall within  
7 the jurisdiction of this Tribunal with respect to administrative hearings to be held  
8 pursuant to A.R.S. § 41- 2198(3), which requires the Administrative Law Judge to  
9 adjudicate complaints and ensure compliance with Title 33, Chapter 16, and planned  
10 community documents.

11 In light of the fact that Petitioner lacks standing and did not present an identifiable  
12 issue that falls within this Tribunal's jurisdiction under A.R.S. § 41-2198 *et seq.*,  
13 Respondent's First Amended Motion to Dismiss is granted.

14 **THEREFORE,**

15 **IT IS ORDERED** dismissing this matter.

16 *In the event of certification of the Administrative Law Judge Decision by the*  
17 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*  
18 *days from the date of that certification.*

19 Done this day, October 28, 2011.

20  
21 /s/ Lewis D. Kowal  
22 Administrative Law Judge  
23

24 Transmitted electronically to:

25 Gene Palma, Director  
26 Department of Fire Building and Life Safety  
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