

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

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3 **ALJCERT ALJ decision certified as final 7/31/12: Transmitted to all parties./rjr**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 ROBERT L. VISE

8 Petitioner,

9 vs

10 EAST 12 CONDO HOA

11 Respondent.

**No. 12F-H1212003-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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14 **HEARING:** May 30, 2012

15 **APPEARANCES:** Robert L. Vise on his own behalf; Diane Gorinac on behalf of  
16 East 12 Condo HOA

17 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal

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19 **FINDINGS OF FACT**

20 **RULING**

21 This hearing involved Robert L. Vise's ("Petitioner") allegation that East 12  
22 Condo HOA ("Respondent"/"Association") failed to use insurance proceeds to repair his  
23 roof and instead, placed such proceeds in a contingency fund. The Administrative Law  
24 Judge concludes that Petitioner failed to prove that his roof is damaged and that the  
25 insurance proceeds should be used to repair his roof. The issue of whether the  
26 insurance proceeds should be in the contingency fund need not be addressed because  
27 it would only be an issue if Petitioner proved that the funds should be used to repair his  
28 roof. The Administrative Law Judge concludes that Respondent did not violate any  
29 provision of the condominium association documents or law relied upon by Petitioner.

30 **FINDINGS OF FACT**

1. At all times relevant to this matter, Petitioner resided in a condominium community located in Sun City, Arizona, overseen by Respondent, and governed by a Board of Management ("Board"). It is undisputed that there are six buildings consisting of twelve units within the condominium community and there are twelve members of Respondent.

2. The Board consists of five members. At all times relevant to this matter, Diane Gorinac ("Ms. Gorinac") was the Chairman of the Board.

3. At all times relevant to this matter, Respondent was and is governed by documents such as a Declaration of Restrictions, Establishment of Board of Management and Lien Rights ("CC&Rs").

4. Petitioner testified that in March 2011, a roofing contractor was driving around his neighborhood and approached him stating that he observed damage to Petitioner's roof, and suggested that an insurance claim be made. Petitioner testified that he informed the contractor that he belonged to a homeowner's association and he directed the roofing contractor to address the situation with the Board's Chairman.

5. Ms. Gorinac testified that after a big hail storm in October 2010, there was concern as to whether the roofs of units in the condominium community were damaged. She further testified that the Board submitted a claim for roof damage under a "blanket insurance policy" that Respondent had with State Farm Insurance Company ("State Farm"). Ms. Gorinac testified that in February 2011, State Farm sent an adjuster out to inspect the roofs of the condominium units. Ms. Gorinac explained that although the roofs did not have hail damage, State Farm covered wind damage to the roofs, such as missing shingles. Upon concluding its processing of the claims submitted, State Farm found the total of the claims of the condominium community to be in the amount of \$8,374.39. State Farm issued a check to Respondent in the amount of \$3,374.39 after subtracting the \$5,000.00 deductible amount.

6. According to Ms. Gorinac, because not all of the condominium roofs were damaged and the extent of the units that had damage varied, the Board did not know how to distribute the insurance proceeds equitably. The Board decided to have the members of the Association address how the insurance proceeds were to be handled.

1 7. On April 29, 2011, a vote of the membership was taken, with eight members  
2 physically in attendance, and four voting through absentee ballots. The members  
3 decided by an eight to four vote that the insurance proceeds should be placed in a  
4 contingency fund.

5 8. Ms. Gorinac testified that the insurance proceeds were placed in a contingency  
6 fund for the benefit of the condominium community and that the funds are still in that  
7 fund.

8 9. The evidence of record established that subsequently, Petitioner hired an  
9 attorney, who contacted Respondent and asserted that Respondent is responsible for  
10 repairing Petitioner's roof.

11 10. On February 3, 2012, Petitioner filed a Petition with the Arizona Department of  
12 Fire, Building and Life Safety regarding this matter and paid a filing fee of \$550.00.

13 11. Petitioner asserted at hearing that Respondent violated Section (5) H of the  
14 CC&Rs and A.R.S. § 33-1253(H).

15 12. There was conflicting evidence presented by the parties as to whether  
16 Petitioner's roof is damaged and requires repair. Petitioner testified that his roof is  
17 damaged and presented photographs taken by him on May 18, 2012, and relied upon  
18 copies of photographs taken by a roofing contractor that he believed depicted various  
19 slopes of his unit roof. Petitioner also referred to roofing contractor estimates in support  
20 of his position that his roof is damaged.

21 13. In contrast, Respondent presented the testimony of witnesses, including the  
22 testimony of Donna Armstrong ("Ms. Armstrong"), who shares the duplex unit with  
23 Petitioner in Building 6.<sup>1</sup> Respondent's witnesses testified that based upon personal  
24 observation and knowledge, as well as the estimates and other photographs taken by  
25 the person who repaired Ms. Armstrong's roof, Petitioner's roof is not damaged and the  
26 areas of the roof that Petitioner claims was damaged are areas of Ms. Armstrong's roof.

27 14. Lorraine Matts, a Board member, explained that the estimate of damage with  
28 respect to Building 6 did not identify any portion of Petitioner's roof, and to her  
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<sup>1</sup> Petitioner and Ms. Armstrong share a common roof slope.

1 knowledge, the area addressed in the estimate was that portion of the roof belonging to  
2 Ms. Armstrong.

3 15. Respondent presented an email that Petitioner sent on May 2, 2011, stating that  
4 after the storm, Petitioner replaced shingles and cemented pieces that were sticking up.  
5 See Exhibit E. In the email, Petitioner further indicated that his roof would have looked  
6 as bad as Ms. Armstrong's had he had not taken such action. Petitioner did not  
7 address the specifics of what he fixed on the roof and what damage remained. Further,  
8 the evidence that Petitioner performed some repair to his roof could explain why  
9 Respondent's witnesses did not observe any damage. However, with the sketchy  
10 evidence presented, the Administrative Law Judge is unable to conclude what portion of  
11 Petitioner's roof was damaged or if there was any damage.

12 16. Under the circumstances, without being able to physically observe the roof at  
13 issue, and there being no reason to disbelieve either party's evidence, the  
14 Administrative Law Judge cannot give greater weight to the evidence presented by  
15 either party regarding whose roof was damaged and requires repair.

16 17. In his closing argument, Petitioner requested that the insurance proceeds be  
17 used to repair his roof, that Respondent pay his \$550.00 filing fee, and that Respondent  
18 reimburse him the attorney's fees he has previously incurred.

### 19 **CONCLUSIONS OF LAW**

20 1. At this proceeding, Petitioner bears the burden of proving by a preponderance of  
21 the evidence that Respondent violated A.R.S. § 33-1253(H) and Section 5(H) of the  
22 CC&Rs. See A.A.C. R2-19-119.

23 2. A preponderance of the evidence is "[e]vidence which is of greater weight or more  
24 convincing than the evidence which is offered in opposition to it; that is, evidence which as  
25 a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW  
26 DICTIONARY 1182 (6th ed. 1990).

27 3. A.R.S. § 33-1253(H), provides:

28 Any portion of the condominium for which insurance is required under this  
29 section which is damaged or destroyed shall be repaired or replaced  
promptly by the association unless any of the following apply:

30 1. The condominium is terminated.



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/s/ Lewis D. Kowal  
Administrative Law Judge

Transmitted electronically to:  
Gene Palma, Director  
Department of Fire Building and Life Safety