

1 5) Respondent's Answer to the Petition provided, in part, as follows:

2 Although we have a Petition Ballot that was sent to all owners--
3 including Mr. Yuille, and had signatures as well as a 10-3 vote to
4 recall him[.] We by lack of removal information possibly did not
5 follow the statute 33-1248[.] We do [apologize] and it will not
6 happen again.

7 **Petitioner's Testimony**

8 6) Petitioner testified that he returned from an out-of-state trip to Utah and found that a
9 special meeting was taking place regarding a petition to remove Petitioner from the
10 Board of Directors of Caida Court. Petitioner stated that he asked for a copy of the
11 recall petition and was informed that a copy of the recall petition would be provided
12 to him after the conclusion of the special meeting. Petitioner testified that a copy of
13 the recall petition was never provided to him and that he did not believe that a
14 written recall petition actually existed. Petitioner stated that Caida Court failed to
15 comply with the applicable provisions of A.R.S. § 33-1243(H).¹

16 **PROVISIONS OF LAW REFERENCED AT HEARING**

17 1. A.R.S. § 33-1243(H) provides as follows:

18 H. Notwithstanding any provision of the declaration or bylaws to
19 the contrary, the unit owners, by a majority vote of members
20 entitled to vote and voting on the matter at a meeting of the
21 members called pursuant to this section at which a quorum is
22 present, may remove any member of the board of directors with or
23 without cause, other than a member appointed by the declarant.
24 For purposes of calling for removal of a member of the board of
25 directors, other than a member appointed by the declarant, the
26 following apply:

27 1. In an association with one thousand or fewer members, on
28 receipt of a petition that calls for removal of a member of the
29 board of directors and that is signed by the number of persons
30 who are entitled to cast at least twenty-five per cent of the votes in
the association or one hundred votes in the association,
whichever is less, the board shall call and provide written notice of

¹ 9/13/12 Hearing Record at 5:50-8:11.

1 a special meeting of the association as prescribed by section 33-
2 1248, subsection B.

3 2. Notwithstanding section 33-1248, subsection B, in an
4 association with more than one thousand members, on receipt of
5 a petition that calls for removal of a member of the board of
6 directors and that is signed by the number of persons who are
7 entitled to cast at least ten per cent of the votes in the association
8 or one thousand votes in the association, whichever is less, the
9 board shall call and provide written notice of a special meeting of
10 the association. The board shall provide written notice of a special
11 meeting as prescribed by section 33-1248, subsection B.

12 3. The special meeting shall be called, noticed and held within
13 thirty days after receipt of the petition.

14 4. For purposes of a special meeting called pursuant to this
15 subsection, a quorum is present if the number of owners to whom
16 at least twenty per cent of the votes or one thousand votes,
17 whichever is less, are allocated is present at the meeting in
18 person or as otherwise permitted by law.

19 5. If a civil action is filed regarding the removal of a board
20 member, the prevailing party in the civil action shall be awarded
21 its reasonable attorney fees and costs.

22 6. The board of directors shall retain all documents and other
23 records relating to the proposed removal of the member of the
24 board of directors for at least one year after the date of the special
25 meeting and shall permit members to inspect those documents
26 and records pursuant to section 33-1258.

27 **CONCLUSIONS OF LAW**

- 28 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to file a
29 petition with the Department for a hearing concerning violations of planned
30 community documents or violations of statutes that regulate planned communities.
That statute provides that such petitions will be heard before the Office of
Administrative Hearings.

- 1 2. The burden of proof at an administrative hearing falls to the party asserting a claim,
2 right, or entitlement and the standard of proof on all issue in this matter is by a
3 preponderance of the evidence. See A.A.C. R2-19-119.
4 3. Proof by “preponderance of the evidence” means that it is sufficient to persuade the
5 finder of fact that the proposition is “more likely true than not.” *In re Arnold and*
6 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).
7 4. Undisputed credible testimony established that Respondent failed to call, notice, and
8 hold the special meeting to remove Petitioner as a member of the Board of Directors
9 of Caida Court within thirty days after receipt of the petition to remove Petitioner as a
10 member of the Board of Caida Court. This Tribunal concludes that Respondent
11 violated the charged provision of A.R.S. § 33-1243(H).

12 **RECOMMENDED ORDER**

13 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
14 party in this matter.

15 It is further ORDERED that Respondent comply with the applicable provisions of
16 A.R.S. § 33-1243(H) in the future.

17 It is further ORDERED that Caida Court pay Petitioner his filing fee of \$550.00, to
18 be paid to the Department in this matter within thirty (30) days of this Order.

19 It is further ORDERED that Caida Court pay a civil penalty in the amount of
20 \$200.00 to the Department within thirty (30) days of the date of this Order.

21 *In the event of certification of the Administrative Law Judge Decision by the*
22 *Director of the Office of Administrative Hearings, the effective date of this Order will*
23 *be five (5) days from the date of that certification.*

24 Done this day, September 18, 2012.

25
26 /s/ M. Douglas
27 Administrative Law Judge
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29 Transmitted electronically to:
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1 Gene Palma, Director
2 Department of Fire Building and Life Safety

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