

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

2
3 **ALJCERT ALJ decision certified as final 11/13/12: Transmitted to parties./rjr**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 SUZANNE SALLUS,
8 Petitioner,

9 vs

10 SUNRISE DESERT VISTAS POA,
11 Respondent.

No. 12F-H1212008-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

12
13 **HEARING:** September 12, 2012

14 **APPEARANCES:** Petitioner Suzanne Sallus was represented by M. Philip
15 Escolar, Esq. Respondent Sunrise Desert Vistas Property Owners Association was
16 represented by Grace Violette, President.

17 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

18
19 **RULING**

20 This hearing involved an allegation made by Petitioner Suzanne Sallus that
21 Sunrise Desert Vistas Property Owners Association (Respondent) violated A.R.S. § 33-
22 1806 by failing to provide her with certain documents at the time she was purchasing a
23 parcel in the community. The Administrative Law Judge concludes that Petitioner
24 established a violation by Respondent.

25
26 **FINDINGS OF FACT**

- 27 1. Respondent is an association of homeowners located in
28 Scottsdale, Arizona.
- 29 2. Sunrise Desert Vista (SDV) has more than 50 units.
- 30 3. In late February 2011, Petitioner entered escrow on the
purchase of a parcel in SDV.

1 4. On March 12, 2011, Equity Title Agency, Inc. (Equity) contacted
2 Respondent on behalf of Petitioner. Equity requested information regarding the amount
3 and timing of the maintenance fee, special assessments, resale statement fees, and
4 transfer fees.

5 5. On March 12, 2011, Petitioner responded to Equity's inquiry
6 with the following:

7 a. Annual assessments were \$5.50 per acre per year due on January
8 first of each year.

9 b. There was the possibility of a road grading assessment per lot, and
10 this assessment was \$60.00 the previous year. If imposed, the
11 assessment was due on January first.

12 c. "The \$400 transfer fee is a little unusual as it is pending right now.
13 After a decision is made about this transfer fee, the \$400 transfer fee
14 check will be either cashed by Sunrise Desert Vistas or given back to the
15 seller or buyer."

16 d. The CC&Rs and Bylaws for Respondent "are recorded on our web
17 site at www.sdvpoa.org."

18 e. "If you have any questions you can contact us at
19 board@sdvpoa.org."

20 6. On March, 16, 2011, the Superior Court of Maricopa County,
21 Arizona entered a Consent Judgment dismissing a lawsuit between Raymond Given
22 and Respondent (Given Lawsuit).

23 7. On March 21, 2011, the Superior Court of Maricopa County,
24 Arizona entered an Order Granting Stipulation for Dismissal With Prejudice dismissing a
25 lawsuit between Grace Violette and Respondent (Violette Lawsuit).

26 8. On April 1, 2011, Respondent sent a letter to the Sallus Family
27 Trust. The letter provided:

28 We are the Property Owner's Association for 14214 E. Lone
29 Mountain Road, parcel number 219-40-049T. This letter is to
30 inform you that the CC&R's and Bylaws for the Sunrise Desert
Vistas Property Owner's Association in [sic] on our web site at
www.sdvpoa.org.

1 Our assessments for 2011 were \$5.50 per acre owned.
2 These assessments can be increased by 10% each year. There
3 was also a grading assessment in 2011 which was \$60 per lot.
4 These fees have already been paid in full for 2011 by the seller.

5 9. Between March 2011 and April 2011, Respondent's website
6 included a "Financials" page. The "Financials" page provided only, "Financial reports
7 are available to property owners on request. Please email the board to receive a copy.
8 Board@sdvpoa.org."

9 10. On or about April 2, 2011, Petitioner closed escrow on the
10 parcel.

11 11. Prior to closing escrow, Petitioner did not directly receive any of
12 the following from Respondent:

- 13 a. A copy of the bylaws and the rules of the association;
- 14 b. A copy of the declaration;
- 15 c. A dated statement containing:
 - 16 i. A statement as to whether a portion of the unit was covered
17 by insurance maintained by the association;
 - 18 ii. The total amount of money being held by the association as
19 reserves;
 - 20 iii. A statement as to whether the records of the association
21 reflected any alterations or improvements to the unit that violated
22 the declaration; and
 - 23 iv. A statement that provided:

24 I hereby acknowledge that the declaration, bylaws and
25 rules of the association constitute a contract between the
26 association and me (the purchaser). By signing this
27 statement, I acknowledge that I have read and
28 understand the association's contract with me (the
29 purchaser). I also understand that as a matter of Arizona
30 law, if I fail to pay my association assessments, the
association may foreclose on my property.
- d. A copy of the current operating budget of the association;
- e. A copy of the most recent annual financial report of the association;

- f. A copy of the most recent reserve study of the association; or
- g. A statement summarizing any pending lawsuits in which the association was a named party.

12. From May 2011 through April 2012, Petitioner served as a member of the SDV Board of Directors.

13. On April 2, 2012, Petitioner filed a Petition with the Department of Fire, Building and Life Safety (Department) alleging Respondent violated A.R.S. § 33-1806 by failing to provide her with the required documents at the time she was purchasing the parcel. Petitioner paid a \$550.00 filing fee.

14. On April 30, 2012, Respondent filed an Answer with the Department denying the allegations set forth in the Petition.

15. On April, 10, 2012, the Department sent a letter to Respondent notifying it that Petitioner had filed the Petition alleging that Respondent violated Arizona statute.

16. On June 11, 2012, the Department issued a Notice of Hearing to the parties notifying them that a hearing on the Petition would be conducted by the Office of Administrative Hearings.

17. On September 12, 2012, a hearing was held on the Petition and the parties presented evidence and argument regarding the statute and the documents provided to Petitioner.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to hear disputes between a property owner and a planned community association. However, the Department does not have jurisdiction to hear “[a]ny dispute among or between owners to which the association is not a party.” A.R.S. § 41-2198.01(B).

2. Respondent alleged that because Petitioner was a member of the SDV Board of Directors on the date she filed the petition, the Department does not have jurisdiction to hear the dispute. However, as Petitioner is a homeowner and

1 Respondent is a party to this action, the Department has jurisdiction to hear the dispute
2 in accordance with A.R.S. § 41-2198.01(B).

3 3. In this proceeding, Petitioner bears the burden of proving by a
4 preponderance of the evidence that Respondent violated A.R.S. § 33-1806. A.A.C. R2-
5 19-119.

6 4. A preponderance of the evidence is “[e]vidence which is of greater
7 weight or more convincing than the evidence which is offered in opposition to it; that is,
8 evidence which as a whole shows that the fact sought to be proved is more probable than
9 not.” BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).

10 5. A.R.S. § 33-1806 provides, in pertinent part:

11 A. . . . [F]or planned communities with fifty or more units, the association
12 shall mail or deliver to a purchaser or a purchaser’s authorized agent
13 within ten days after receipt of a written notice of a pending sale that
14 contains the name and address of the purchaser, all of the following in
15 either paper or electronic format:

- 14 1. A copy of the bylaws and the rules of the association.
- 15 2. A copy of the declaration.
- 16 3. A dated statement containing:
 - 17 (a) The telephone number and address of a principal
18 contact for the association, which may be an association manager,
19 an association management company, an officer of the association
20 or any other person designated by the board of directors.
 - 21 (b) The amount of the common regular assessment and
22 the unpaid common regular assessment, special assessment or
23 other assessment, fee or charge currently due and payable from
24 the selling member. If the request is made by a lienholder, escrow
25 agent, member or person designated by a member pursuant to
26 section 33-1807, failure to provide the information pursuant to this
27 subdivision within the time provided for in this subsection shall
28 extinguish any lien for any unpaid assessment then due against
29 that property.
 - 30 (c) A statement as to whether a portion of the unit is
covered by insurance maintained by the association.
 - (d) The total amount of money held by the association as
reserves.
 - (e) If the statement is being furnished by the association,
a statement as to whether the records of the association reflect any
alterations or improvements to the unit that violate the declaration.
The association is not obligated to provide information regarding
alterations or improvements that occurred more than six years

1 before the proposed sale. Nothing in this subdivision relieves the
2 seller of a unit from the obligation to disclose alterations or
3 improvements to the unit that violate the declaration, nor precludes
4 the association from taking action against the purchaser of a unit
for violations that are apparent at the time of purchase and that are
not reflected in the association's records.

5
6 (h) A statement that provides "I hereby acknowledge that
7 the declaration, bylaws and rules of the association constitute a
8 contract between the association and me (the purchaser). By
9 signing this statement, I acknowledge that I have read and
10 understand the association's contract with me (the purchaser). I
11 also understand that as a matter of Arizona law, if I fail to pay my
association assessments, the association may foreclose on my
property." The statement shall also include a signature line for the
purchaser and shall be returned to the association within fourteen
calendar days.

12 4. A copy of the current operating budget of the association.

13 5. A copy of the most recent annual financial report of the
14 association. If the report is more than ten pages, the association may
provide a summary of the report in lieu of the entire report.

15 6. A copy of the most recent reserve study of the association, if
any.

16 7. A statement summarizing any pending lawsuits, except
17 those relating to the collection of assessments owed by members other
18 than the selling member, in which the association is a named party,
including the amount of any money claimed.

19
20 6. Equity's March 12, 2011, contact with Respondent contained
21 Petitioner's name and address and constituted notice to Respondent that Petitioner was
22 purchasing a parcel in SDV.

23 7. Petitioner argued Respondent violated A.R.S. § 33-1806 by
24 failing to provide her with all of the documents required by the statute within ten days of
25 receiving notice of the pending sale of the parcel she eventually purchased.

26 8. Respondent maintained that Equity was Petitioner's authorized
27 agent and Respondent's response to Equity's inquiry fulfilled its statutory obligation.
28 Specifically, Respondent alleged that its statement to "see CC&R's and By-Laws on
29 www.sdvpoa.org" advised Petitioner where she could find all the information required by
30 the statute.

1 9. Assuming, *arguendo*, that Equity was an authorized agent of
2 Petitioner for the purposes of A.R.S. § 33-1806, Respondent failed to provide Petitioner
3 and/or Equity with all of the information required by the statute.

4 10. While it may be argued Respondent's directive to see the
5 CC&Rs and Bylaws on the association website fulfilled the requirement of providing
6 those documents in "either paper or electronic format," the website did not contain all of
7 the documents required by the statute.

8 11. Respondent did not dispute it failed to send a dated statement
9 to Petitioner including a statement as to whether a portion of the unit was covered by
10 insurance maintained by the association; the total amount of money being held by the
11 association as reserves; a statement as to whether the records of the association
12 reflected any alterations or improvements to the unit that violated the declaration; or the
13 statement the purchaser was required to sign and return.

14 12. Respondent argued the current operating budget of the
15 association and the most recent annual financial report were published on the website
16 and Petitioner had been directed to refer to the website for information. On both
17 occasions Petitioner was directed to Respondent's website, it was in relation to the
18 CC&Rs and the Bylaws and no mention was made of any financial records being found
19 there. Furthermore, the "Financials" page of Respondent's website provided the email
20 address of the SDV Board of Directors to request a copy of the financial reports, but
21 specifically provided those documents were "available to property owners on request."
22 At the time in question, Petitioner was not a property owner, but was in escrow to
23 purchase the parcel.

24 13. Respondent acknowledged it did not provide any information to
25 Petitioner or Equity regarding the pending litigation in the Violette Lawsuit or the Given
26 Lawsuit. Respondent argued the Violette Lawsuit and the Given Lawsuit were both
27 settled at the time it received the communication from Equity, so Respondent had no
28 pending litigation to report to Petitioner or Equity. Respondent based this argument on
29 the fact that the parties signed the settlement agreements in these cases on February
30

1 21, 2011, before Petitioner entered escrow on the parcel and before the communication
2 from Equity.

3 14. The Given Lawsuit was not dismissed in the Superior Court of
4 Maricopa County, Arizona until March 16, 2011, and the Violette Lawsuit was not
5 dismissed in the Superior Court of Maricopa County, Arizona until March 21, 2011.
6 Accordingly, both cases were pending and had not been dismissed as of the date
7 Respondent was notified of the pending sale of the parcel to Petitioner.

8 15. Petitioner established by a preponderance of the evidence that
9 Respondent violated A.R.S. § 33-1806 by failing to provide her with the required
10 documents at the time she was purchasing the parcel.

11 16. The Petitioner has prevailed, and therefore, Respondent shall
12 pay to Petitioner her filing fee required by A.R.S. § 41-2198.01.

13 **RECOMMENDED ORDER**

14 Respondent is ordered to comply with A.R.S. § 33-1806 and provide Petitioner
15 with copies of all of the documents required under the statute within ten days of the
16 Order entered in this matter.

17 Respondent is further ordered to pay Petitioner her filing fee of \$550.00 within 30
18 days of the effective date of the Order entered in this matter.

19
20 *In the event of certification of the Administrative Law Judge Decision by the*
21 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
22 *five days from the date of that certification.*
23

24 Done this day, October 2, 2012.

25
26 /s/ Tammy L. Eigenheer
27 Administrative Law Judge

28 Transmitted electronically to:

29
30 Gene Palma, Director

Department of Fire Building and Life Safety

- 1
- 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