

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

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

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 CYNTHIA & BRUCE SANTOMARCO,
8 Petitioners,

No. 12F-H1212012-BFS

9 vs.

**ADMINISTRATIVE
LAW JUDGE DECISION**

10 MOUNTAINVIEW LAKE ESTATES
11 HOMEOWNER ASSOCIATION,
12 Respondent.

13
14 **HEARING:** September 14, 2012

15 **APPEARANCES:** Petitioners appeared on their own behalf. Respondent was
16 represented by Joseph Tadano, Esq.

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

18
19 **RULING**

20 This hearing involved an allegation made by Petitioners Cynthia and Bruce
21 Santomarco that Mountainview Lake Estates Homeowner Association (Respondent)
22 violated the Amended and Restated Declaration of Covenants, Conditions and
23 Restrictions for Mountainview Lake Estates (CC&Rs) by failing to require homeowners
24 within the community to file a claim against their insurance for damage to roofs resulting
25 from a hailstorm on October 5, 2010. The Administrative Law Judge concludes that
26 Petitioner failed to establish a violation by Respondent.

27
28 **FINDINGS OF FACT**

29 1. At all times relevant to this matter, Petitioner owned a townhome in the
30 community known as Mountainview Lake Estates (MLE). MLE consisted of 68 units.

1 2. Respondent is an association of homeowners located in Scottsdale,
2 Arizona.

3 3. As provided in the CC&Rs, Respondent was responsible for the regular
4 maintenance and repair of the roofs of the units within MLE. During the week of
5 October 3, 2010, USA Roofing, Inc. (USA Roofing) was performing regularly scheduled
6 maintenance on the roofs of 13 units within MLE, including Petitioners' roof. This
7 maintenance included recoating the foam roofs in the community.

8 4. On October 5, 2010, a severe hailstorm struck the MLE area.

9 5. After the hailstorm, USA Roofing notified Respondent that it would, at no
10 additional charge, patch any hail damage to the 13 units that it was in the process of
11 recoating.

12 6. After patching and recoating the roofs of the 13 units, USA Roofing
13 informed Respondent that it could repair the roofs of the remaining units that suffered
14 damage from the hailstorm for \$500.00 per unit.

15 7. Following the hailstorm, Respondent consulted an attorney regarding its
16 obligation to repair the roofs in MLE in accordance with the CC&Rs.

17 8. On January 27, 2011, Adrienne A. Speas, Attorney with Ekmark &
18 Ekmark, L.L.C., sent a letter to the MLE homeowners at the request of Respondent.
19 The letter indicated that, reading the CC&Rs as a whole, "the Owners [were] obligated
20 to make repairs to their roofs if their roofs [were] 'substantially destroyed' and there
21 [were] insurance proceeds available for the repairs." The letter went on to explain that
22 because the damage to each of the roofs in question was only going to cost \$500.00 to
23 repair, the roofs could not be said to be "substantially destroyed" and it was appropriate
24 for Respondent to repair the roofs. Exhibit D.

25 9. On March 18, 2011, Respondent sent a letter to the MLE homeowners.
26 The letter notified homeowners that 13 units had already been repaired and recoated
27 and needed no further action. The homeowners of the remaining 55 units were advised
28 they could choose whether to file a claim with their insurance companies and have
29 repairs completed with the insurance proceeds or to have Respondent complete the
30 repairs on the roofs as originally planned. Homeowners were instructed to notify

1 Respondent by April 15, 2011, if they had made or intended to make an insurance
2 claim.

3 10. In March 2011, Sunvek Roofing inspected the roofs of five MLE units.
4 Based on the number of hailstrikes and the depth of the hailstrikes, Sunvek Roofing
5 recommended new foam roofs for the five units

6 11. In total, 14 MLE homeowners elected to file a claim with their insurance
7 and had their roofs repaired or replaced. USA Roofing completed repairs to the roofs of
8 the remaining units.

9 12. At some point, the homeowner of Unit 70 filed a complaint with the
10 Registrar of Contractors (ROC) regarding the roof repairs completed by USA Roofing.
11 The ROC inspected the roof and determined the work was compliant with ROC
12 standards.

13 13. None of the MLE homeowners reported any roof leaks to Respondent,
14 and no MLE residence was rendered uninhabitable as a result of roof damage.

15 14. On May 30, 2012, Petitioners filed a Petition with the Department of Fire,
16 Building and Life Safety (Department) alleging Respondent violated the CC&Rs by
17 failing to require MLE homeowners to file a claim against their insurance for damage to
18 roofs resulting from the October 5, 2010, hailstorm.

19 15. On June 4, 2012, the Department sent a letter to Respondent notifying it
20 that Petitioners had filed a Petition alleging that Respondent violated the CC&Rs.

21 16. On June 22, 2012, Respondent filed an Answer with the Department
22 denying the allegations set forth in the Petition.

23 17. On August 10, 2012, the Department issued a Notice of Hearing to the
24 parties notifying them that a hearing on the Petition would be conducted by the Office of
25 Administrative Hearings.

26 18. On September 14, 2012, a hearing was held on the Petition and the
27 parties presented evidence and argument regarding the CC&Rs.

28 **CONCLUSIONS OF LAW**

1 upon receipt of the insurance proceeds, contract to repair or rebuild such
2 damaged or destroyed portions of the structures on the Lot in a good
3 workmanlike manner in conformance with the original plans and
4 specifications of said structures.

5 6. Petitioners argued that the October 5, 2010, hailstorm was an act of God
6 that relieved Respondent of the responsibility of repairing the damage as detailed in
7 Article VI of the CC&Rs.

8 7. While the October 5, 2010, hailstorm may be considered an act of God,
9 Article VI goes on to provide that any “repair or replacement [resulting from an act of God]
10 shall be governed by Article VII, Section 4 herein.” Article VII, Section 4, provides that if a
11 structure “shall be *substantially destroyed*,” the homeowner must file an insurance claim.
12 (Emphasis added).

13 8. The evidence presented established that many, if not all, of the roofs in
14 MLE suffered some sort of damage as a result of the October 5, 2010, hailstorm.

15 9. The only evidence presented to establish that the roofs of MLE units
16 repaired by USA roofing were “substantially destroyed” such that the homeowners
17 should have been required to file a claim with their insurance was from the Sunvek
18 Roofing representative who testified that he believed the roofs needed to be replaced
19 based on the size and number of hailstrikes.

20 10. No evidence was presented to show that the repairs completed by USA
21 Roofing failed to correct the damage sustained. The ROC determined the repair work
22 completed by USA Roofing on Unit 70 was compliant with ROC standards. One
23 homeowner testified his roof had been patched by USA Roofing, was not scheduled to
24 be recoated until 2013, and had not had any leaking or any other issues. No MLE
25 homeowners reported any roof leaks to Respondent following the repairs completed by
26 USA Roofing.

27 11. As USA Roofing was able to repair the roofs and prevent any further
28 issues for only \$500.00 per unit, the roofs of the MLE units cannot be said to have been
29 “substantially damaged.” Accordingly, it was Respondent’s responsibility to repair and
30 maintain the roofs of the MLE units as provided in the CC&Rs.

