

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

2  
3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 CINDY DENAPOLI

8 Petitioner,

9 vs

10 SOUTHERN RIDGE CONDOMINIUM  
11 ASSOCIATION,

12 Respondent.

**No. 13F-H1314006-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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14  
15 **HEARING:** April 10, 2014, at 8:00 a.m.

16 **APPEARANCES:** Cindy Denapoli (hereinafter "Petitioner" or "Ms. Denapoli")  
17 appeared on her own behalf. Southern Ridge Condominium Association (hereinafter  
18 "Southern Ridge" or "Respondent") was represented by its attorney, Maria R. Kupillas,  
19 Esq., Farley, Seletos & Choate.

20 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

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22 Evidence and testimony were presented and the following Findings of Fact,  
23 Conclusions of Law, and Recommended Order are made:

24 **FINDINGS OF FACT**

25 **Background**

- 26 1. The Department of Fire, Building and Life Safety (the "Department") is authorized by  
27 statute to receive Petitions for Hearings from members of homeowners' associations  
28 and from homeowners' associations in Arizona.  
29 2. Southern Ridge is a condominium association located in Mesa, Arizona.  
30 3. Petitioner owns a condominium unit in and is a member of Southern Ridge.

1 4. Petitioner filed a petition with the Department alleging that Southern Ridge had  
2 violated the provisions of A.R.S. § 32-1255(C)(2). Petitioner specifically alleged as  
3 follows:

4 "Management" fees of \$9,000-\$9,667/month are being assessed  
5 to owners as part of "HOA dues" that are directly benefitting only  
6 those units that are part of a separate "Rental pool" since 1/1/11.

7 5. Southern Ridge's Answer to the Petition provided, in part, as follows:

8 All of the complaint items in the Petition are denied.

9 6. The members of Southern Ridge, including the Petitioner, are all  
10 investors that assumed title to their condominium units when the real estate  
11 market collapsed. Southern Ridge was originally owned by Right Place  
12 Properties. None of the members actually reside at Southern Ridge.

13 7. The majority of condominium unit owners formed a "Rental Pool." The  
14 Rental Pool members share non-common element expenses and distribute  
15 net profits from the Rental Pool on a pro-rata basis using the square footage  
16 of each member's unit(s) as a percentage of the entire square footage of the  
17 Rental Pool.

18 8. Petitioner is not a member of the Rental Pool.

19 9. Preferred Communities (hereinafter "Preferred") performs all of  
20 Southern Ridge's accounting.

21 10. Professional Equity Management (hereinafter "PEM") is the  
22 management company for Southern Ridge.

23 **Testimony**

24 **Testimony of Cindy Denapoli**

25 11. Ms. Denapoli testified that Preferred issued checks made out to Southern Ridge  
26 Apartments to the Rental Pool. Ms. Denapoli stated that the management fee is shown  
27 as income to the Rental Pool. Ms. Denapoli testified that Preferred shows the rents for  
28 the condominium units in the Rental Pool and the management fee of \$9,666.00 per  
29 month as income for the Rental pool. Ms. Denapoli stated that all of the expenses of  
30 the individual condominium units in the Rental Pool are then deducted from the gross

1 income and the balance is then distributed out to the members of the Rental Pool.

2 12. Ms. Denapoli testified that Southern Ridge is subsidizing the individual  
3 condominium unit owners that are members of the Rental Pool. Ms. Denapoli stated  
4 that there are 113 condominium units in Southern Ridge and 12 of the units are not in  
5 the Rental Pool. Ms. Denapoli testified that she is an owner of one of the condominium  
6 units that is not part of the Rental Pool.

7 13. Ms. Denapoli testified that Preferred also pays \$800.00 per month to the Rental  
8 Pool for swimming pool maintenance. Ms. Denapoli stated that PEM only provides  
9 limited management of the common areas.

10 14. Ms. Denapoli testified that the onsite manager for the Rental Pool functions as  
11 the onsite manager for Southern Ridge. Ms. Denapoli stated that the only issue she  
12 has with the \$9,666.00 management fee is that the fee is higher than the going rate for  
13 HOA management.

14 15. Ms. Denapoli asserted that the "going rate" for HOA management is \$10 per unit  
15 per month. Ms. Denapoli testified that Preferred is receiving half of the going rate for  
16 just managing the finances for Southern Ridge. Ms. Denapoli stated that \$9,666.00 per  
17 month for managing 113 condominium units is dramatically higher than \$10 per unit.

18 16. Ms. Denapoli testified that she received a deed to her condominium unit in lieu of  
19 foreclosure in 2009. Ms. Denapoli stated that she uses the condominium unit as a  
20 rental. Ms. Denapoli acknowledged that she had received multiple offers to join the  
21 Rental Pool.

22 17. Ms. Denapoli testified that PEM has advised her that it manages Southern Ridge  
23 but does not manage the Rental Pool. Ms. Denapoli stated that PEM maintains the  
24 common areas and then invoices Preferred for its expenses. Ms. Denapoli  
25 acknowledged that the conditions at Southern Ridge have improved since PEM was  
26 retained.

27 18. Ms. Denapoli testified that she has no quarrel with PEM. Ms. Denapoli stated  
28 that the problem that she is complaining about is that large management fees are being  
29 paid to the Rental Pool. Ms. Denapoli testified that all of the members of the board of  
30 directors (hereinafter "the board") for Southern Ridge are members of the Rental Pool.

1 Ms. Denapoli asserted that she believes that all of the members of the board are  
2 receiving a financial benefit from the money that is being paid directly to the Rental  
3 Pool.

4 **Testimony of William J. Watkins**

5 19. William J. Watkins (hereinafter "Mr. Watkins) testified that he is a member of  
6 Southern Ridge. Mr. Watkins stated that he is a member of the board. Mr. Watkins  
7 testified that he is the treasurer for Southern Ridge.

8 20. Mr. Watkins testified that Southern Ridge is 100% investor owned. Mr. Watkins  
9 stated that there are no owner-occupants in Southern Ridge. Mr. Watkins testified that  
10 he is a member of the Rental Pool. Mr. Watkins stated that he is the "finance guy" for  
11 the Rental Pool. Mr. Watkins testified that owners of 102 condominium units at  
12 Southern Ridge are members of the Rental Pool.

13 21. Mr. Watkins testified that the board became unhappy with Southern Ridge's first  
14 HOA management company because it was trying to operate Southern Ridge as an  
15 owner-occupied condominium association rather than an investor-owned condominium  
16 association.

17 22. Mr. Watkins testified that first HOA management company was replaced with  
18 PEM. Mr. Watkins stated that Southern Ridge then retained Preferred to handle the  
19 finances for Southern Ridge. Mr. Watkins testified that what Southern Ridge was trying  
20 to accomplish was "somewhat controversial." Mr. Watkins stated that Preferred was  
21 only willing to handle the accounting for Southern Ridge because Preferred was  
22 concerned about the legality of "what we had put in place and were attempting to do."

23 23. Mr. Watkins testified that the board felt that there was no requirement in the  
24 Southern Ridge's CC&Rs that HOA expenses for Southern Ridge had to be separated.  
25 Mr. Watkins stated that the Rental Pool members share expenses for the repair and  
26 maintenance of the interior of Rental Pool condominium units, the cost of collection of  
27 rents, the expenses of screening tenants, and the legal expenses for eviction of tenants.  
28 Mr. Watkins testified that these expenses are paid exclusively by the Rental Pool and  
29 that the costs are not shared with condominium unit owners who are not members of  
30 the Rental Pool.

1 24. Mr. Watkins testified that Preferred handles the finances for Southern Ridge and  
2 PEM handles common area maintenance for Southern Ridge. Mr. Watkins  
3 acknowledged that the monthly fee of \$9,666.00 is written directly from Preferred to the  
4 Rental Pool. Mr. Watkins stated that, initially, the board wanted to pay the monthly fee  
5 directly to PEM. Mr. Watkins testified that PEM objected to direct payment for the  
6 management fee by Southern Ridge. Mr. Watkins stated that PEM asked that Southern  
7 Ridge pay the monthly management fee to the Rental Pool and that the Rental Pool  
8 then pay PEM for its services.

9 25. Mr. Watkins testified that the Rental Pool pays PEM for "many expenses." Mr.  
10 Watkins stated that the fixed monthly fee of \$9,666.00 covers 80 to 82 percent of the  
11 cost of maintaining Southern Ridge and that the remaining percentage is covered solely  
12 by the Rental Pool. Mr. Watkins testified that there is no breakdown available for the  
13 amount of time that the two onsite managers spend on Rental Pool business or  
14 Southern Ridge business.

15 26. Mr. Watkins testified that the board was optimistic about selling the entire  
16 condominium complex to a new owner. Mr. Watkins stated that value of the  
17 condominium complex would increase if all of the owners would cooperate in the sales.  
18 Mr. Watkins testified that approximately fifty separate owners own all of the  
19 condominium units in Southern Ridge.

20 27. Mr. Watkins testified that the four members of the board for Southern Ridge are  
21 the same four individuals that operate the Rental Pool as the Rental Pool committee.  
22 Mr. Watkins stated that Rental Pool business is deferred until after the board completes  
23 all Southern Ridge business

24 28. Mr. Watkins testified that PEM is a real estate company and that he does not  
25 know if it is qualified to be an HOA management company. Mr. Watkins stated that he  
26 believes that PEM can function as an HOA management company. Mr. Watkins  
27 acknowledged that PEM was taking management fees indirectly through the Rental  
28 Pool account for performing HOA management duties. Mr. Watkins testified that the  
29 monthly \$9,666.00 check for management fees is issued by Preferred to the Rental  
30 Pool aka Southern Ridge Apartments. The Rental Pool then pays PEM for its

1 management services and then pays Rental Pool expenses. Mr. Watkins stated that  
2 whatever money is left is distributed to the Rental Pool members. Mr. Watkins testified  
3 that there is no distribution to Southern Ridge condominium owners who are not  
4 members of the Rental Pool. Mr. Watkins stated that the Rental Pool is not a  
5 corporation or an LLC and does not have a tax ID.

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7 **PROVISIONS OF LAW REFERENCED AT HEARING**

8  
9 1. A.R.S. § 33-1255(C)(2) provides as follows:

10 C. Unless otherwise provided for in the declaration all of the  
11 following apply:

12 . . . .

13 2. Any common expense or portion of a common expense  
14 benefitting fewer than all of the units shall be assessed exclusively  
15 against the units benefitted.

16 **CONCLUSIONS OF LAW**

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

22 2. The burden of proof at an administrative hearing falls to the party asserting a  
23 claim, right, or entitlement and the standard of proof on all issue in this matter is by a  
24 preponderance of the evidence. See A.A.C. R2-19-119.

25 3. Proof by “preponderance of the evidence” means that it is sufficient to persuade  
26 the finder of fact that the proposition is “more likely true than not.” *In re Arnold and*  
*Baker Farms*, 177 B.R. 648, 654 (9<sup>th</sup> Cir. BAP (Ariz.) 1994).

27 4. A monthly check for management fees in the sum of \$9,666.00 is issued by  
28 Preferred to the Rental Pool aka Southern Ridge Apartments. The Rental Pool aka  
29 Southern Ridge Apartments is not a corporate entity or a limited liability company and  
30 does not have a tax license. The Rental Pool pays PEM for its management services

1 and pays Rental Pool for non-common element expenses and then distributes any net  
2 profits from the Rental Pool on a pro-rata basis expenses to the Rental Pool members.  
3 No distribution is made to condominium owners who are not part of the Rental Pool.  
4 This Tribunal concludes that Southern Ridge violated the charged provision of A.R.S. §  
5 33-1255(C)(2).

6 **RECOMMENDED ORDER**

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

9 It is further ORDERED that Southern Ridge fully comply with the applicable  
10 provisions of A.R.S. § 33-1255(C)(2) in the future.

11 It is further ORDERED that Southern Ridge pay Petitioner her filing fee of  
12 \$550.00, said amount to be paid directly to Petitioner within thirty (30) days of this  
13 Order.

14 It is further ORDERED that Southern Ridge pay a civil penalty in the amount of  
15 \$200.00 to the Department within thirty (30) days of the date of this Order.

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

19 Done this day, April 25, 2014.

20 /s/ M. Douglas  
21 Administrative Law Judge

22 Transmitted electronically to:

23 Gene Palma, Director  
24 Department of Fire Building and Life Safety  
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