

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

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 LOGAN C. WOLF,

8 Petitioner,

9 vs

10 LAKESIDE RIDGE HOMEOWNERS
11 ASSOCIATION,

12 Respondent.

No. 14F-H1415006-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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15 **HEARING:** February 12, 2015, at 8:00 a.m.

16 **APPEARANCES:** Logan C. Wolf (hereinafter "Petitioner" or "Mr. Wolf")
17 appeared on his own behalf. Lakeside Ridge Homeowners Association (hereinafter
18 "Lakeside" or "Respondent") failed to appear.

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

20
21 Evidence and testimony were presented and the following Findings of Fact,
22 Conclusions of Law and Recommended Order are made:

23 **FINDINGS OF FACT**

24 **Background and Procedure**

- 25 1. The Department of Fire, Building and Life Safety (the "Department") is authorized by
26 statute to receive Petitions for Hearings from members of homeowners' associations
27 and from homeowners' associations in Arizona.
28 2. Lakeside is a homeowners association located in Tucson, Arizona.
29 3. Petitioner owns a residence in and is a member of Lakeside.
30 4. Petitioner filed a Petition with the Department alleging that Lakeside had violated
Article 2, Section 2.2(B)(2) of Lakeside's CC&Rs.

1 5. Petitioner specifically alleged as follows:

2 "First Amendment" (20131000725) was created on March 26,
3 2013, which violates the CC&R listed above. Class B
4 membership should have ceased in 2012 per Class B (2), as the
5 first home was sold in 2008. This amendment should not be
6 recognized and any and all Class B members to should converted
7 to Class A members with only one (1) votes per owner.

8 6. On November 3, 2014, the Department issued written Notice to Lakeside that a
9 Petition for Hearing had been filed against Lakeside. The Notice and a copy of the
10 Petition was sent to Lakeside by certified mail. The Notice provided in relevant part as
11 follows:

12 With this letter and attachments, the Respondent is **notified** of the
13 Petition. Pursuant to A.R.S. § 41-2198.01(D), Respondent is
14 required to complete the attached response form and submit it to
15 the Department within **TWENTY (20) days** of the date of this
16 letter, showing cause, if any, why the Petition should be
17 dismissed. Pursuant to A.R.S. § 41-2198.01(F). Respondent's
18 failure to answer is deemed an admission of the allegations made
19 in the Petition and the Director of the Department shall issue a
20 default decision.

21 7. This is no evidence that Lakeside filed an Answer to the Petition in this matter.

22 TESTIMONY

23 **Testimony of Logan Christopher Paul Wolf**

24 8. Mr. Wolf testified that Class B membership in Lakeside should have ceased in 2012
25 per applicable CC&Rs. Mr. Wolf stated that the first home in Lakeside was sold in 2008.
26 Mr. Wolf said that Lakeside had violated Article 2, Section 2.2(B)(2) of Lakeside's
27 CC&Rs by not converting Class B membership in the homeowners association ("HOA")
28 to Class A membership as required by Article 2, Section 2.2(B)(2) of Lakeside's CC&Rs.
29 Mr. Wolf asserted that Lakeside had attempted to evade the requirements of Article 2,
30 Section 2.2(B)(2) of Lakeside's CC&Rs by creating an amendment to the CC&Rs on
March 26, 2013, extending the Class B membership in the HOA and allowing the
Developer, T.J. Bednar & Co., to maintain control of Lakeside.¹

¹ See Exhibit A (First Amendment and restatement of Declarations of Convents for Lakeside Ridge recorded on 4/10/13).

1 9. Mr. Wolf testified that the original CC&Rs for Lakeside were recorded on September
2 16, 2005. Mr. Wolf stated that the first home in Lakeside was sold in August 2007. Mr.
3 Wolf said that the first home was not actually turned over to a homeowner until February
4 19, 2008.²

5 10. Mr. Wolf testified that the original subdivision for Lakeside was developed by
6 Lennar Arizona Inc. Mr. Wolf stated that the Lennar Arizona Inc. sold the undeveloped
7 portion of Lakeside to Bednar Lakeside Ridge LLC on or about July 6, 2009.³ Mr. Wolf
8 said that the Developers Lennar Arizona Inc., and its successor in interest, T.J. Bednar
9 & Co. (hereinafter collectively, "Developer") have repeatedly expressed an intent to turn
10 Lakeside over to the homeowners but has not done so.

11 11. Mr. Wolf testified that for the last seven years, homeowners have paid in excess of
12 \$7,000.00 annually to a property management company that the homeowners had no
13 vote in hiring. Mr. Wolf stated that Lakeside's failure to comply with Lakeside's CC&Rs
14 has been financially detrimental to the homeowners in Lakeside.

15 12. Mr. Wolf's testimony is found to be credible.

16 **Testimony of Christopher Grant**

17 13. Christopher Grant (hereinafter "Mr. Grant") testified that he is a resident in and a
18 member of Lakeside. Mr. Grant stated that the residents of Lakeside had been led to
19 believe that they would be able to run Lakeside rather than have the developer continue
20 to control Lakeside. Mr. Grant said that the developer has continually indicated that it
21 was going to turn Lakeside over to the homeowners but has failed to do so. Mr. Grant
22 asserted that the developer "tried to pull the rug from under the homeowners" by
23 attempting to amend the CC&Rs so that the developer would maintain control of
24 Lakeside.

25 14. Mr. Grant testified that at Lakeside's meetings, the manager for Lakeside
26 represented himself as being a representative for the developer. Mr. Grant stated that
27 \$7,000.00 annually to a management company to manage Lakeside was excessive.
28 Mr. Grant said that the developer should have turned Lakeside to the homeowners.

29 _____
30 ² See Exhibit B (printout of from Pima County Recorder's Office showing warranty deed recorded with
Pima County Recorder's Office on 2/19/08).

³ See Exhibit D (Subdivision Disclosure Report for Lakeside Ridge).

1 15. Mr. Grant's testimony is found to be credible.

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3 **PROVISIONS OF CC&Rs REFERENCED AT HEARING**

4
5 1. Article 2, Section 2.2(B)(2) of Lakesides' CC&Rs provides, in relevant part, as
6 follows:

7 The Class B Members shall be Declarant and Developer, who
8 shall be entitled to forty-five (45) memberships and forty-five (45)
9 votes for each lot owned. The Class B membership shall cease
10 and be converted to Class A membership on the happening of the
11 earliest of the following events:

12

13 2. Four (4) years following the conveyance of the first Lot and
14 Owner, other than the Declarant or Developer.⁴

15 **CONCLUSIONS OF LAW**

16 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to
17 file a petition with the Department for a hearing concerning violations of planned
18 community documents or violations of statutes that regulate planned communities.

19 That statute provides that such petitions will be heard before the Office of
20 Administrative Hearings.

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

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

27 4. Mr. Wolf credibly testified that the original CC&Rs for Lakeside were recorded on
28 September 16, 2005, and that the first home in residence in Lakeside was conveyed to
29 an owner other than Lakeside or the Developer on February 19, 2008. Article 2,
30 Section 2.2(B)(2) of Lakeside's CC&Rs provides that Class B membership shall cease

⁴ See CC&Rs for Lakesides in the electronic record.

1 and be converted to Class A membership within four (4) years following the
2 conveyance of the first Lot to an Owner, other than the Declarant or Developer. This
3 Tribunal concludes that Lakeside has violated the charged provision of Article 2,
4 Section 2.2(B)(2) of Lakeside's CC&Rs.

5
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 Lakeside shall fully comply with Article 2, Section
10 2.2(B)(2) of Lakeside's CC&Rs within thirty (30) days of the date of this Order.

11 It is further ORDERED that Lakeside shall pay Petitioner his filing fee of \$550.00,
12 to be paid directly to Mr. Wolf within thirty (30) days of this Order.

13 It is further ORDERED that Lakeside pay a civil penalty in the amount of \$500.00
14 to the Department within thirty (30) days of the date of this Order.⁵

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

18 Done this day, March 2, 2015.

19 /s/ M. Douglas
20 Administrative Law Judge

21 Transmitted electronically to:

22 _____
23 ⁵ A.R.S. § 41-2198.01 provides, in relevant part, as follows:

24 A. The administrative law judge may order any party to abide by the statute,
25 condominium documents, community documents or contract provision at issue
26 and may levy a civil penalty on the basis of each violation. For purposes of
27 actions brought under the Arizona mobile home parks residential landlord and
28 tenant act, the civil penalty shall not exceed five hundred dollars. All monies
29 collected pursuant to this article shall be deposited in the state general fund to
30 be used to offset the cost of administering the administrative law judge
function, except that monies collected from disputes involving condominiums
or planned communities as prescribed in section 41-2198.01, subsection B
shall be deposited in the condominium and planned community hearing office
fund established by section 41-2198.05. If the petitioner prevails, the
administrative law judge shall order the respondent to pay to the petitioner the
filing fee required by section 41-2198.01.

Gene Palma, Director
Department of Fire Building and Life Safety

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