

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 Attila Revesz

No. 15F-H1415008-BFS

8 Petitioner

ADMINISTRATIVE LAW JUDGE

9 vs.

DECISION

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11 Shadow Mountain Villas Condominium
12 Association of Phoenix

13 Respondent

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16 **HEARING:** May 7, 2015

17 **APPEARANCES:** Attila Revesz on his own behalf; Craig Boates, Esq. for
18 Respondent

19 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

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21 **FINDINGS OF FACT**

22 1. On February 6, 2015, the Arizona Department of Fire, Building and Life
23 Safety ("Department") issued a Notice of Hearing setting the above-captioned matter for
24 hearing on March 19, 2015, at the Office of Administrative Hearings in Phoenix,
25 Arizona.

26 2. Petitioner Attila Revesz is a homeowner and member of Respondent
27 Shadow Mountain Villas Condominium Association of Phoenix ("Shadow Mountain").
28 The Notice of Hearing shows that Mr. Revesz alleges that Shadow Mountain violated
29 Article 2.1 of its Bylaws.

30 3. The matter was continued and the hearing was conducted on May 7, 2015.

1 4. Mr. Revesz appeared and testified and also presented the testimony of
2 Rick Sanchez.

3 5. Shadow Mountain presented the testimony of Jo-Ann Greenstein, vice-
4 president of RealManage, which acts as the agent or manager for Shadow Mountain.

5 6. On November 28, 2014, Mr. Revesz filed with the Department a Single
6 Issue Petition alleging that Shadow Mountain had violated Article 2.1 of its Bylaws
7 because there was no annual meeting held in 2014.

8 7. Although a meeting was conducted on May 22, 2014, Mr. Revesz alleges
9 that this was not a proper meeting because there was not a quorum of Board members
10 or of homeowners.

11 8. Three Board members constitute a quorum.

12 9. Ms. Greenstein provided credible testimony that Board members Russell
13 Hutchinson and Shelly Rothgeb were present in person at the May 22nd annual
14 meeting and that Board member Angelo Peri was present via telephone.

15 10. Ms. Greenstein also provided credible testimony that there was a quorum
16 of homeowners present, either personally or through proxy.

17 11. Mr. Revesz was not present at the May 22nd meeting, but Mr. Sanchez
18 was. Mr. Sanchez testified that he did not see a telephone in the meeting room or hear
19 anyone on a phone. Ms. Greenstein acknowledged that there is not a landline in the
20 meeting room, but she testified that Mr. Peri was present via cell phone.

21 12. At the May 22nd annual meeting, by voice-vote, Mr. Revesz, Mr. Sanchez
22 and a third candidate were elected as new board members. The election was conducted
23 by voice-vote because there were only three candidates for three open positions on the
24 Board.

25 13. Immediately after the annual meeting of May 22nd, a second meeting was
26 conducted, this one being a Board meeting. Minutes for the Board meeting list the
27 Board members including those elected at the annual meeting.¹ Mr. Peri did not attend
28 the Board meeting.

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¹ Mr. Revesz is erroneously listed as Attila Balbo.

1 14. Documents that Mr. Revesz had submitted into evidence show that during
2 2014 he and Mr. Sanchez were acting in the capacity of Board members based on the
3 results of the election held at the meeting of May 22, 2014. Exhibits D and E.²

4 15. Mr. Revesz's exhibits include draft minutes from the May 22nd annual
5 meeting and the Board meeting that followed. Mr. Revesz argued that these show that
6 Mr. Peri was not present by telephone at the annual meeting because the draft minutes
7 show he was absent.

8 16. Ms. Greenstein testified that draft minutes for the annual meeting had an
9 error and that one of the reasons draft minutes are prepared is because errors can, and
10 do, occur.

11 17. Shadow Mountain had admitted into evidence minutes for the May 22,
12 2014 annual meeting that show Mr. Peri was present at that meeting by telephone.
13 Exhibit 1.

14 18. Ms. Greenstein testified that the May 22, 2014 annual meeting minutes
15 were adopted at a meeting held in March 2015. On cross examination, Mr. Sanchez
16 testified that these minutes were approved without objection at the meeting in March
17 2015. On follow-up questioning by Mr. Revesz, Mr. Sanchez changed his position and
18 stated that there had not been a vote to approve these minutes. Mr. Revesz testified
19 that there was no vote to approve these minutes.

20 CONCLUSIONS OF LAW

21 1. Mr. Revesz bears the burden of proof to show that Shadow Mountain
22 committed the alleged violations; the standard of proof on all issues in this matter is that
23 of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

24 2. A preponderance of the evidence is "[e]vidence which is of greater weight
25 or more convincing than the evidence which is offered in opposition to it; that is,
26 evidence which as a whole shows that the fact sought to be proved is more probable
27 than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

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30 ² Mr. Revesz had submitted into evidence Exhibits A through I. During the hearing however, the parties referred to these documents not by exhibit number, but by individual page number using "bates" numbers.

